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HILLYER'S CORPORATE MANAGEMENT

AND
BY-LAWS, WITH FORMS

BY
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OF THE CALIFORNIA BAR
AUTHOR OF "LAW OF EVIDENCE," "HILLYER'S JUSTICE
CODE," ETC.

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PREFACE

The author's conviction of the real necessity for a complete guide, available alike to the corporation attorney and the corporation officer, is the only apology offered for adding this volume to the shelves of books of the law.

It is written in the conviction that the valuable experience which has come to the author out of extensive professional engagements in the organization and management of the law side of corporate life has been such an experience as will be useful to those to whom this work is addressed. It will be found that the forms suggested have stood the test of careful judicial scrutiny. Outlined forms for organization of corporations include consideration of that which should be avoided as well as of that which should be done. The author believes that he has succeeded in pointing out in a manner making for facile application the several steps to be taken from the inception of the intention to incorporate through the act of incorporation, its functioning during its existence, its dissolution, and the winding up of its affairs.

It has been the aim throughout to produce a practical, workable guide; to do so with precision and accuracy, and yet to produce in the smallest volume possible a complete up-to-date work dealing with the law of formation, conduct, and management of corporations and kindred organizations.

If the painstaking effort of the author shall have produced fruition of the hope actuating the effort, then he feels he will have been justified.

The editor desires here to acknowledge his indebtedness to Mr. Irve C. Boldman of the San Diego Bar for valuable assistance in the preparation of this edition.

CURTIS HILLYER.

SAN DIEGO, August 24, 1927.

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MANUAL OF CORPORATE MANAGEMENT

CHAPTER I

INTRODUCTION.

- § 1. Scope of This Book.
- § 2. Corporation Defined.
- § 3. Distinctive Properties of Corporations.
- § 4. Individuality of Corporate Existence.
- § 5. Citizenship of Corporation.
- § 6. Kinds or Classes of Corporations.
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- § 13. Reasons for Incorporation.
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- § 16. Advantages of Partnerships Over Corporations.
- § 17. Substitutes for Incorporation.
- § 18. Nature of Corporation Fiction.
- § 19. "One Man" Corporations.

§ 1. **Scope of This Book.**—This work is designed to cover briefly the law relating to the promotion, organization, and management of private corporations, generally. It is principally intended to afford some guidance to those having responsibility for the direction of corporations under the new laws, which have been the outgrowth of the last few years. There is a tendency more and more to regulate corporations, both in the interest and welfare of their stockholders and members, as well as in the interest of the public at large. This tendency is evidenced by laws regulating the creation and issuance of corporate securities. Of course a work of

this size does not exhaust the decisions upon any point, nor pretend to do so. However, it will be found to contain sufficient information to indicate the methods and procedure to be adopted in most classes of questions frequently coming up for determination by corporation secretaries and attorneys.

§ 2. Corporation Defined.—A corporation is a creature of the law having certain powers and duties of a natural person. "It is an artificial person created by law or under authority of law from a group or succession of natural persons and having a continuous existence irrespective of that of its members and powers and liabilities different from those of its members." This is the definition given by the Century Dictionary. Chief Justice Marshall defining a corporation said: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law."¹

This definition has frequently been approved.² It is purely a creation of law, with certain rights in common with individuals, and others that are distinctive, all of which must be held and exercised to carry out the purposes for which it is created.³

A private corporation, it has been said, may be defined as an association of persons to whom the sovereign has offered a franchise to become an artificial, juridical person, with a name of its own, under which it can act and contract, and sue and be sued, and who has either accepted the offer and effected an organization in substantial conformity with its terms, in which case a corporation *de jure* has been constituted, or has done acts indicating a purpose to accept such offer and effected an organization designed to be, but in fact not, in substantial conformity with its terms, in which case a corporation *de facto* has been constituted.⁴

¹ *Dartmouth College v. Woodward*, 4 Wheat. (U. S.) 518, 636, 4 L. Ed. 629.

² *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 20 S. Ct. 518, 44 L. Ed. 657; *Coyle v. McIntire*, 7 Houst. (Del.) 44, 30 Atl. 728, 40 A. S. R. 109; *Higgins v. Downward*, 8 Houst. (Del.) 227, 32 Atl. 133, 40 A. S. R. 141; *Miller v. Ewer*, 27 Me. 509, 46 A. D. 619; *McCandless v. Richmond & D. R. Co.*, 38 S. C. 103, 16 S. E. 429, 18 L. R. A. 440.

³ *Coyle v. McIntire*, 7 Houst. (Del.) 44, 30 Atl. 728, 40 A. S. R. 109.

⁴ *Mackay v. New York, etc., R. Co.*, 82 Conn. 73, 72 Atl. 583, 24 L. R. A. (N. S.) 768.

§ 3. Distinctive Properties of Corporations.—Being the mere creature of law, a corporation possesses only those properties which the charter of its creation confers upon it, either expressed or incidental to its very existence. These are such as were supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality—properties by which a perpetual succession of many persons is considered the same as, and may act as, a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies and the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals is capable of acting for the promotion of the particular object in the same manner as one immortal being.⁵ There is a popular conception of a corporation distinct from its strict legal definition. The non-professional citizen seldom distinguishes the group of persons and property interests constituting the perceptible and easily designated components from that invisible entity which lawyers recognize as the real corporation. A corporation is for most purposes an entity distinct from its individual members or stockholders who, as natural persons, are merged in the corporate identity.⁶

§ 4. Individuality of Corporate Existence.—A corporation is, in law, a person or entity entirely distinct from its stockholders and officers. It may have interest distinct from theirs. Their interest may be adverse to its interest.⁷ It has been held that a sole stockholder may be treated in equity as the corporation, when the equities of a case so require.⁸ Neither a portion nor all of the natural persons who compose a corporation, or who own its stock and control its

⁵ *Dartmouth College v. Woodward*, 4 Wheat. (U. S.) 518, 636, 4 L. Ed. 629.

⁶ *Exchange Bank of Macon v. Macon Const. Co.*, 97 Ga. 1, 25 S. E. 326, 33 L. R. A. 800; *Home Fire Ins. Co. v. Barber*, 67 Neb. 644, 93 N. W. 1024, 108 A. S. R. 716, 60 L. R. A. 927.

⁷ *J. J. McCaskill Co. v. United States*, 216 U. S. 504, 30 S. Ct. 386, 54 L. Ed. 597.

⁸ *Swift v. Smith*, 65 Md. 428, 57 A. R. 336, 5 Atl. 534.

affairs, are the corporation itself; and when a single individual composes a corporation, he is not himself the corporation. In such case the man is one person, and the corporation is another person.⁹

Between the corporation and the stockholder, the latter is to be recognized as the real beneficiary, and consequently that equitable rights and remedies the benefit whereof would inure solely to the shareholder are to be regarded as exercised for him by the corporation, and not as something belonging to it independently. A case where this principle comes into play is to be seen in attempts to place property beyond the reach of creditors by fraudulent incorporations. In such cases, courts do not hesitate to look behind the corporation to the real and substantial beneficiaries.¹⁰

The fiction by which an ideal legal entity is attributed to a duly formed incorporated company, existing separate and apart from the individuals composing it, is of such general utility and application as frequently to induce the belief that it must be universal, and be in all cases adhered to, although the greatest frauds may thereby be perpetrated under the fiction as a shield. But modern cases, sustained by the best text-writers, confine the fiction to the purposes for which it was adopted.¹¹

The individuality of the corporation, apart from its membership, is so distinct that two corporations may have identically the same directors—even the same members or stockholders. Two corporations have the right, within the scope of their chartered powers, to deal with each other, notwithstanding the fact that some or all of the directors are common to both.¹²

⁹ *Exchange Bank of Macon v. Macon Const. Co.*, 97 Ga. 1, 25 S. E. 326, 33 L. R. A. 800.

¹⁰ *First Nat. Bank of Chicago v. Trebein Co.*, 59 Ohio St. 316, 52 N. E. 834; *Terhune v. Hackensack Sav. Bank*, 45 N. J. Eq. 344, 19 Atl. 377; *Kellogg v. Douglas County Bank*, 58 Kan. 43, 48 Pac. 587, 62 A. S. R. 596; *Lusk v. Riggs*, 65 Neb. 258, 91 N. W. 243; *Jones v. Williams*, 139 Mo. 1, 39 S. W. 486, 40 S. W. 353, 61 A. S. R. 436, 37 L. R. A. 682; *Brundred v. Rice*, 49 Ohio St. 640, 32 N. E. 169, 34 A. S. R. 589.

¹¹ *Home Fire Ins. Co. v. Barber*, 67 Neb. 644, 93 N. W. 1024, 108 A. S. R. 716, 60 L. R. A. 927; *First Nat. Bank v. Trebein Co.*, 59 Ohio St. 316, 52 N. E. 834.

¹² *Coe v. East, etc., Ry. Co.*, 52 Fed. 543; *San Diego, etc., R. R. Co. v. Pacific Beach Co.*, 112 Cal. 53, 44 Pac. 333; *Pauly v. Pauly*, 107 Cal. 8, 40 Pac. 29, 48 A. S. R. 98; *Jessup v. Illinois Central Ry. Co.*, 43 Fed. 483.

A corporation is so distinct from its stockholders and members, that even where one individual acquires the entire stock of a corporation, it still continues a separate entity, and must proceed in the transaction of its business with the same formalities as if there were a multiplicity of stockholders.¹³

§ 5. Citizenship of Corporation.—A corporation is not a citizen within the meaning of the equal privileges and immunities clause of the federal constitution. And while it is held that corporations are persons within the meaning of the fourteenth amendment to the federal constitution, which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law, it has been as often decided that corporations are not included in that portion of the same amendment which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.¹⁴ On the other hand, corporations are regarded as "citizens" within the provision of article III, sec. 2, conferring jurisdiction on the federal courts of cases "between citizens of different states," in such a sense that diversity of citizenship may give the federal courts jurisdiction of the suit or controversy.¹⁵ A corpora-

¹³ *Evarts v. Killingsworth Mfg. Co.*, 20 Conn. 447; *Mathis v. Morgan*, 72 Ga. 517, 525, 526, 53 A. R. 847; *Winona, etc., R. R. Co. v. St. Paul, etc., R. R. Co.*, 23 Minn. 359; *Newton Mfg. Co. v. White*, 42 Ga. 148; *Commonwealth ex rel. Attorney-General v. Monongahela Bridge Co.*, 216 Pa. 108, 64 Atl. 909, 8 A. C. 1073; *Monongahela Bridge Co. v. Pittsburgh, etc., Traction Co.*, 196 Pa. St. 25, 46 Atl. 99, 79 A. S. R. 685; *Rhawn v. Edge Hill Furnace Co.*, 201 Pa. 637, 51 Atl. 360; *Exchange Bank v. Macon Construction Co.*, 97 Ga. 1, 25 S. E. 326, 33 L. R. A. 800; *Goulburn Valley Butter, etc., Co. v. Bank of New South Wales* 26 Vict. L. R. 351; *Button v. Hoffman*, 61 Wis. 20, 20 N. W. 667, 50 A. R. 131; *Camp v. Gress*, 250 U. S. 308, 39 S. Ct. 478, 63 L. Ed. 997.

¹⁴ *State v. Louisville, etc., R. Co.*, 97 Miss. 35, 51 So. 918, 53 So. 454, A. C. 1912C 1150; *Hawley v. Hurd*, 72 Vt. 122, 47 Atl. 401, 82 A. S. R. 922, 52 L. R. A. 195; *St. Louis, etc., R. Co. v. State*, 120 Ark. 182, 179 S. W. 342, A. C. 1917C 873.

¹⁵ *Louisville, etc., R. Co. v. Letson*, 2 How. (U. S.) 497, 11 L. Ed. 353; *Marshall v. Baltimore, etc., R. Co.*, 16 How. (U. S.) 314, 14 L. Ed. 953; *Chicago, etc., R. Co. v. Whitton*, 13 Wall. (U. S.) 270, 20 L. Ed. 571; *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 265, 8 S. Ct. 1370, 32 L. Ed. 239; *Western Union Tel. Co. v. Dickinson*, 40 Ind. 444, 13 A. R. 295.

tion, however, chartered by two states is deemed a citizen of each of such states as regards its liability to be sued in the courts of either state.¹⁶

§ 6. Kinds or Classes of Corporations.—Within the broadest conception of the term, the state is a corporation, and from sovereignty to the lowest form, there may be, and are, corporations of many degrees of importance, possessing powers of varying magnitude. It is difficult to conceive of any practicable and legitimate object of life the accomplishment of which may not be made the subject matter of incorporation, no statutory limitation forbidding.

The term "corporation" is sufficiently broad to include public entities such as municipalities, but as used in constitutions and statutes it has frequently been limited to private corporations as distinguished from those which are purely public.¹⁷

§ 7. Public and Private Corporations.—Corporations may be divided into public and private. Public corporations such as counties, towns or cities are brought into existence either by act of the sovereign power of the state or nation, or, where municipal corporations are formed under general laws, by the will of the majority, in the territorial area affected, the minority becoming members involuntarily. They are organized purely for governmental purposes. A private corporation, on the other hand, is voluntary with respect to every member or stockholder, the system of government prescribed by statute and by-laws being merely a ready means to some desirable end. Corporations are public when created for public purposes only, connected with the administration of the government, and where the whole interest and franchises are the exclusive property and domain of the government itself.¹⁸ Private corporations are created for private as distinguished from purely public purposes, and they are not in contemplation of law public because it may have been supposed by the legislature that their establish-

¹⁶ *Ohio, etc., R. Co. v. Wheeler*, 1 Black (U. S.) 286, 17 L. Ed. 130; *Chicago, etc., R. Co. v. Whitton*, 13 Wall. (U. S.) 270, 20 L. Ed. 571; *Memphis, etc., R. Co. v. Alabama*, 107 U. S. 581, 2 S. Ct. 432, 27 L. Ed. 518.

¹⁷ *Donahue v. Newburyport*, 211 Mass. 561, 98 N. E. 1081, A. C. 1913B 742; *Springfield Gas, etc., Co. v. Springfield*, 292 Ill. 236, 126 N. E. 739, 18 A. L. R. 929.

¹⁸ *Tinsman v. Belvidere Delaware R. Co.*, 26 N. J. L. 148, 69 A. D. 565.

ment would promote either directly or consequently the public interest.¹⁹

§ 8. Profit and Non-Profit Corporations.—The nature of the end sought again divides private corporations into those formed for profit (commercial), and those formed for other than pecuniary gain, the latter including religious, charitable (formerly called eleemosynary), and purely social bodies, whose constituents are termed *members*, as distinguished from the *stockholders* of a corporation formed for profit.

§ 9. Corporations Aggregate and Sole.—Corporations are sometimes divided into corporations aggregate and corporations sole.²⁰ A corporation aggregate is composed of more than one person, and in some states it must be composed of at least three persons.¹ Corporations sole consist of one person only, and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. A corporate body, when reduced to one stockholder, is said to be in abeyance merely, ready to resume active functions whenever, by transfers of shares to others by the sole owner, it becomes again a body aggregate.²

The legislatures of the several states, unless restricted by constitutional provisions, may grant corporate powers to one person, with power to associate others with him, or to have succession without doing so, and so empower him, or his successors, to exercise all the corporate powers; and his acts when acting upon the subject matter of the corporation and within its sphere of action and grant of power are the acts of the corporation.³

§ 10. Cooperative Corporations.—In a class by itself is the cooperative corporation, which may be formed either for profit or

¹⁹ American Livestock Com. Co. v. Chicago Livestock Exch., 143 Ill. 210, 32 N. E. 274, 36 A. S. R. 385, 18 L. R. A. 190; Forbes Pioneer Boat Line v. Everglades Drainage Dist., 77 Fla. 742, 82 So. 346.

²⁰ Roman Catholic Archbishop v. Shipman, 79 Cal. 288, 21 Pac. 830.

¹ See Cal. Civil Code, section 285.

² Gadsden First Nat. Bank v. Winchester, 119 Ala. 168, 24 So. 351, 72 A. S. R. 904.

³ Penobscot Boom Corp. v. Lamson, 16 Me. 224, 33 A. D. 656.

not for profit. There is sometimes no so-called capital stock divided into shares, each member having an equal interest in the business. A cooperative corporation not for profit is frequently formed by a number of individuals engaged in a similar line of business, such as fruit raising, the object sought being to regulate economically the marketing of their products and the purchase of necessary supplies. Although organized for pecuniary gain, such a corporation does not directly distribute profits.

§ 11. Public Utilities.—The degree of statutory and governmental oversight rendered necessary in the case of certain corporations organized for profit, on account of the extent to which their interests encroach upon the rights of the public in general, distinguishes certain concerns formed for profit as “public utility corporations”; such, for instance, are telephone, water, gas, electric, railway, insurance, and banking companies. The increasing strictness of such public regulation, and the growing tendency of municipalities to take over for their own exclusive management such enterprises, is rendering more and more indistinct the line dividing this class of private corporations from that termed public.

§ 12. Quasi-Public Corporations.—There is a certain other form of organized activity which the courts have found it difficult to classify. Reclamation and sanitary districts are given forms of government and general powers resembling those of private corporations. On the other hand, the circumscribed area within which they may operate would seem to indicate that they are merely governmental subdivisions, and not corporations at all. They have therefore been denominated quasi-public corporations.⁴ Such corporations are not, however, public corporations.⁵

§ 13. Reasons for Incorporation.—The formation of a corporation is always the result of a desire on the part of some one or of several persons to meet certain conditions surrounding some contemplated enterprise, either business or social. The magnitude

⁴ *Miners Ditch Co. v. Zellerbach*, 37 Cal. 543, 99 A. D. 300; *People v. Suburban R. Co.*, 178 Ill. 594, 53 N. E. 349, 49 L. R. A. 650; *State ex rel. Coco v. Riverside Irrigation Co.*, 142 La. 10, 76 So. 216.

⁵ *Regents of University of Maryland v. Williams*, 9 Gill. & J. (Md.) 365, 31 A. D. 72.

of the undertaking may be such as to require more capital than can readily be supplied by any one man; the uncertainty of success may deter large investors and invite only such as are willing to risk a small amount each; even where no further capital is required the very character or extent of the investment of the promoters may render necessary some device for determining equitably the interest of each in the business and its profits. Again, where more than one person is interested in not only the returns from, but also the conduct of the concern, some method is desirable whereby orderly management, devoid of friction and insuring due responsibility, may be secured.

§ 14. Benefits of Incorporation.—The benefits which result from the incorporation of business enterprises are many: First, it is the most convenient means of associating a large number of persons in a single enterprise. Many corporations have stockholders running into the thousands, bringing about a cooperation of capital which would be an utter impossibility in the case of a partnership. Second, the death or withdrawal of a stockholder does not affect the corporate organization; it does not require a dissolution or winding up, but the business goes on continuously and uninterruptedly. Third, it affords to the individual an opportunity to invest his funds in one enterprise, without endangering the security of his other funds. In a recent case the supreme court of the United States used the following language: "The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships."⁶

§ 15. Advantages of Corporations Over Partnerships.—Whether an association of natural persons shall take the form of a corporation or copartnership will depend upon a still further analysis of the circumstances in each case. Where further capital

⁶ *Flint v. Stone Tracy Co.*, 220 U. S. 107, 162, 31 S. Ct. 342, 55 L. Ed. 389, A. C. 1912B, 1312.

is sought, particularly when available only in small quantities, the limited liability of each shareholder for the debts of a corporation is a powerful inducement to a subscriber; whereas, if he were asked to become a partner in the firm, he might hesitate lest, in the event of the insolvency of other members, he might be called upon to pay a disproportionate amount of its indebtedness. It very frequently happens that when an ordinary partnership wishes to sell its business it resorts to incorporation; so that, by disposing of its plant piecemeal, in the form of shares in the corporation, it avoids the tremendous loss often resulting from placing it on the market in one piece and at one time. Furthermore, the fact that the activities of the managers of a corporation and their advertisement of its financial condition and prospects are hedged about so closely by special statutory regulations and even by governmental supervision, encourages confidence by prospective purchasers of stock, and, other conditions being equal, enhances the credit of the institution.

The comparatively unlimited authority which each member of a partnership has in the conduct of the business often results in dissatisfaction among the partners themselves and embarrassing confusion in their dealings with third parties, and readily permits the perpetration of fraud, not easily proven, by one partner upon another, or by both upon third parties. In a corporation, on the other hand, the necessity of consultation upon all important matters and the definite limits to the individual authority of each officer and employee prescribed by the by-laws conduce to harmony and fair dealing. Again, a corporation permits greater individual freedom to its members than does a partnership. In the latter, one's invested capital is "tied up," as it were, a withdrawal or substitution, even by death, being frequently wholly impracticable or accompanied by considerable financial loss and inconvenient delay. A stockholder in a corporation, on the other hand, may withdraw either partially or entirely without the consent of his fellow stockholders merely by the sale and transfer to another of a portion or all of his interest in the business. Or, he may use his shares as collateral security on which to borrow money needed more urgently at the particular moment in some other individual enterprise.

§ 16. Advantages of Partnerships Over Corporations. — From the standpoint of the individual members actually engaged

in the conduct of the business, especially where they are few and congenial, a partnership possesses an advantage over a corporation in that its activities are not restricted by the necessity of and expense incident to complying with formal statutory requirements and submitting to governmental supervision. Trade secrets are more easily preserved and one's business companions are always of one's own choosing. The unlimited character of the responsibility of each partner for all of the firm's debts encourages credit, the name of but one person in a partnership being sufficient, in some instances, to inspire unlimited confidence. Where the nature of the business is such that opportunities must be grasped quickly and there is little time for the consultation with one's associates which in such instances the corporate form of association might require, a partnership presents a very desirable form of business cooperation. Whether, however, such advantages outweigh those claimed for corporations depends, as suggested before, upon the exigencies of each case.

§ 17. Substitutes for Incorporation.—Other forms of organization for commercial purposes have been resorted to as occasion makes it convenient to adopt particular characteristics of corporations or of partnerships to the exclusion of others which are less advantageous. A "limited" or "special partnership" is composed of what are termed general partners whose liability to creditors is unlimited, and special partners who risk only the loss of their interests already invested in the business. In this respect, the latter are in a more advantageous position than are stockholders in a corporation. It is obvious, however, that as individuals they add nothing to the credit of the firm. Compliance with statutory requirements as to the filing of statements similar to articles of incorporation is necessary in order that these special partners may be clothed with such immunity.

Frequently, enterprises which will ordinarily be conducted by means of corporations are handled through trust agreements. The capital contributed is placed in the hands of trustees, who are empowered to use it for the purposes specified. Provision is made for the changing of the personnel of the trustees by vote of the capital represented; and for the control and instruction of the trustees in the same manner. This method is frequently resorted to in order to escape the taxation and supervision incident to corporations, but

is not available in all of the states, owing to the statutory restrictions upon the creation of express trusts.

The common law permits persons, no matter how many, to agree to form an unincorporated association and to issue certificates of shares representing property contributed, to make the certificates transferable either by written assignment or by delivery, and to establish a committee having power to make rules for the government of the association. Persons doing these acts do not usurp the functions of a corporation, for the great and distinguishing feature of a corporation is the possession of such juristic qualities as to be a new, legal person, distinct from the individuals forming it. To usurp the functions of a corporation, there must be the usurpation of the qualities of a person, as, for example, to sue or to be sued in an assumed corporate name.⁷

An unincorporated association doing business under a declaration of trust after the plan of the so-called "Massachusetts trust," is not a corporation, but the shareholders in such an association are entitled to certain rights which stockholders in corporations have.⁸

§ 18. Nature of Corporation Fiction.—While the law treats a corporation as though it were a person by process of fiction, its rights and duties are in reality the rights and duties of persons who compose it and not of an imaginary being.⁹ The doctrine that a corporation is a legal entity existing separate and apart from the persons composing it is a mere fiction, introduced for the purposes of convenience and to subserve the ends of justice,¹⁰ and this fiction cannot be urged to an extent and purpose not within its reason and policy, and in furtherance of the ends of justice, a corporation and the individual or individuals owning all its stock and assets will be treated as identical.¹¹

⁷ *Spotswood v. Morris*, 12 Idaho 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665.

⁸ *McMillan v. Greenamyer*, 50 Cal. App. 601, 195 Pac. 734. See chapter on "Massachusetts Trusts."

⁹ *San Diego Gas Co. v. Frame*, 137 Cal. 441, 70 Pac. 295.

¹⁰ *State v. Standard Oil Co.*, 49 Ohio St. 137, 30 N. E. 279, 34 A. S. R. 541, 15 L. R. A. 145.

¹¹ *Gadsden First Nat. Bank v. Winchester*, 119 Ala. 168, 24 So. 351, 72 A. S. R. 904; *Swift v. Smith*, 65 Md. 428, 5 Atl. 534, 57 A. R. 336; *Pott v. Schmucker*, 84 Md. 535, 36 Atl. 592, 57 A. S. R. 415, 35 L. R. A. 392; *D. I. Felsenthal Co. v. Northern Assur. Co.*, 284 Ill. 343, 120 N. E. 268,

§ 19. "One Man" Corporations.—Generally speaking the corporate entity is not destroyed because one person owns all of the stock. In such case the man is one person, and the corporation is another person.¹² Though all the corporate stock is vested in a single member, such member does not become the legal owner of the corporate property.¹³ Whenever a "one man" corporation is incorporated in order that the corporate fiction may be set up as a cover for fraud, the courts will frustrate the attempt regardless of the theoretical nature of the corporate entity and upon a proper showing that a corporation is but the instrumentality through which an individual for convenience transacts his business, not only equity looking through form to substance, but the law itself will hold such corporation bound as the owner of the corporation might be bound, or conversely, hold the owner bound by acts which bind his corporation.¹⁴

The corporate entity cannot, however, be disregarded even though the corporation is controlled by one man, unless something of fraud or kindred wrong appear to justify a departure from the general rule as to corporate identity.¹⁵

While a corporation known as a "one man" corporation is bound by the acts of the individual,¹⁶ before the acts and obligations of a corporation can be legally recognized as those of a par-

1 A. L. R. 602; *Spadra-Clarksville Co. v. Nicholson*, 93 Kan. 638, 145 Pac. 571, A. C. 1916D 652; *Stanford Hotel Co. v. M. Schwind Co.*, 180 Cal. 348, 181 Pac. 780; *Franklin Min. Co. v. O'Brien*, 22 Colo. 129, 43 Pac. 1016, 55 A. S. R. 118; *Donovan v. Purtell*, 216 Ill. 629, 75 N. E. 334, 1 L. R. A. (N. S.) 176.

¹² *Exchange Bank of Macon v. Macon Const. Co.*, 97 Ga. 1, 25 S. E. 326, 33 L. R. A. 800.

¹³ *Parker v. Bethel Hotel Co.*, 96 Tenn. 252, 34 S. W. 209, 31 L. R. A. 706; *Button v. Hoffman*, 61 Wis. 20, 20 N. W. 667, 50 A. R. 131.

¹⁴ *Llewellyn Iron Works v. Abbot Kinney Co.*, 172 Cal. 210, 155 Pac. 986; *Franklin Min. Co. v. O'Brien*, 22 Colo. 129, 43 Pac. 1016, 55 A. S. R. 118; *Donovan v. Purtell*, 216 Ill. 629, 75 N. E. 334, 1 L. R. A. (N. S.) 176; *Hoffman Steam Coal Co. v. Cumberland Coal, etc., Co.*, 16 Md. 456, 77 A. D. 311; *Jones v. Williams*, 139 Mo. 1, 39 S. W. 486, 40 S. W. 353, 61 A. S. R. 436, 37 L. R. A. 682; *Brundred v. Rice*, 49 Ohio St. 640, 32 N. E. 169, 34 A. S. R. 589.

¹⁵ *Erkenbrecher v. Grant*, 187 Cal. 7, 200 Pac. 641; *Clark v. Millsap*, 197 Cal. 765, 242 Pac. 918.

¹⁶ *Gamer Paper Co. v. Tuscany (Tex.)*, 264 S. W. 132.

ticular person, and vice versa, the following combination of circumstances must be made to appear: First, that the corporation is not only influenced and governed by that person, but that there is such a unity of interest and ownership that the individuality, or separateness, of the said person and corporation has ceased; second, that the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice.¹⁷ The sole owner of a corporation will be estopped to deny the validity of an instrument which he has represented to be regularly executed by the corporation.¹⁸

It is generally conceded by the preponderance of authority that where one incorporator associates with himself a number of "dummies" or persons having merely a nominal interest in the company, sufficient to make up the minimum required by statute, a literal compliance with the incorporation law is sufficient, and that the courts cannot read into a statute a provision that each corporator must own a substantial interest.¹⁹

¹⁷ *Minifie v. Rowley*, 187 Cal. 481, 202 Pac. 673.

¹⁸ *Relley v. Campbell*, 134 Cal. 175, 66 Pac. 220; *Bell v. Blessing*, 225 Fed. 750, 141 C. C. A. 34.

¹⁹ *Pott v. Schumucker*, 84 Md. 535, 36 Atl. 592, 57 A. S. R. 415, 35 L. R. A. 392.

CHAPTER II.

PRELIMINARIES TO INCORPORATION.

§ 20. Introduction.

§ 21. General Course of Promotion.

§ 22. What Are Usual Preliminaries?

§ 20. **Introduction.**—A brief outline, at this time, of the progress of a corporate enterprise will serve as an aid in understanding the more detailed account to follow. The promoters, having succeeded in interesting a sufficient amount of capital, proceed to incorporate; whereupon the corporation enacts by-laws, elects directors, secures new stockholders if necessary, and starts business. From time to time, new officers are elected, the required meetings are held; assessments, if necessary, are levied, and dividends declared as the profits permit. A change of name, an increase or a decrease of the capital stock, or an issuance of bonds is effected as occasion demands. Stockholders die, stock is transferred, new members are taken in; but the corporation itself goes on, unless a dissolution becomes necessary or desirable, for the period of its corporate life. All of which proceeds in an orderly manner governed by statute and by-laws made in accordance therewith.

§ 21. **General Course of Promotion.**—As a rule a corporation is only formed after the enterprise has assumed a considerable degree of tangibility. Whatever the scheme may be it originates in the brain of some person. When it reaches the stage of promotion, the first business is generally the acquisition by the promoter of some legal claim upon the property, contract, or whatever it may be which he proposes to exploit. This frequently takes the form of an option. The promoter then commences his operations by associating with himself one or more persons whose business it is to arrange the preliminary details and secure whatever preliminary moneys or promises of money are required. Frequently a prospectus is prepared which sets forth, with more or less detail, the plans of the proposed company. It is a very wise thing, wherever practicable, to secure pledges in advance of the money neces-

sary to set the corporation upon its feet. This is very frequently done by means of preliminary subscriptions to the stock. It is very important that these preliminary subscription agreements should be so drawn that none of the subscribers can withdraw from them.

§ 22. What Are Usual Preliminaries?—The preliminaries to incorporation generally will then comprehend the determination of the enterprise which is to be the business of the corporation, the securing of the necessary agreements so that it can be turned over to the corporation when formed, the securing of the necessary preliminary guarantees, financial and otherwise, the preparation of the prospectus, or other authoritative statement of the plans of the corporation, the adoption of a plan of financing appropriate to the exigencies of the occasion and finally the determination of the precise form of the proposed corporation. These matters are discussed in detail in succeeding chapters.

CHAPTER III.

RIGHTS AND LIABILITIES OF PROMOTERS.

- § 23. Promoters.
- § 24. Relations Between the Corporation and the Promoter.
- § 25. Contracts of Promoters, Whether Binding on Corporation Subsequently Formed.
- § 26. Safeguarding the Interests of Third Persons.

§ 23. **Promoters.**—We cannot conceive a corporation coming into existence without some one actively interesting himself, and devoting effort and organization, and so becoming a promoter. In this broad sense, every corporate enterprise has promoters at its inception. The interpretation and application usually given by the courts and law writers to the term “promoter” are too limited. The definition of the term is as follows: “One who initiates a corporate enterprise. He brings the incorporation and the capital necessary to prosecute the contemplated business together, and is active in setting the corporate machinery in motion.”¹ One among all who concern themselves in bringing about a cooperation among incorporators of a company may be more active than others, but whoever contributes either by way of effort or money, or by becoming a party to a preliminary agreement for the formation of a corporation, initiates it—at least aids in projecting and initiating it, and comes within the above definition.²

§ 24. **Relations Between the Corporation and the Promoter.**—It has sometimes been vaguely asserted that a promoter occupies a fiduciary relation to the corporation formed through his efforts, and to its stockholders. It is true that at a certain stage of the proceeding his relation becomes confidential, and he is bound to make full disclosure of all his transactions. But

¹ See *Densmore Oil Co. v. Densmore*, 68 Pa. St. 43; *Burbank v. Dennis*, 101 Cal. 90, 35 Pac. 444. See, also, *Dickerman v. Northern Trust Co.*, 176 U. S. 181, 20 S. Ct. 311, 44 L. Ed. 423.

² *Hayward v. Leeson*, 176 Mass. 310, 57 N. E. 656, 49 L. R. A. 725; *Pietsch v. Milbrath*, 123 Wis. 647, 101 N. W. 388, 102 N. W. 342, 107 A. S. R. 1017, 68 L. R. A. 945; *Ex-Mission Land & W. Co. v. Flash*, 97 Cal. 610, 32 Pac. 600.

that stage is reached only, if ever, after he has ceased to be a promoter, and has become an associate with others in the enterprise. He may not become an incorporator or stockholder at all, or have any understanding to that effect; in which case no fiduciary relation ever arises. A promoter not yet employed as such may sell property to an association of persons who contemplate becoming the organizers of a corporation at any price they are willing to pay, no matter how much or how little it may have originally cost him; nor is he bound to make any disclosure as to its cost, provided he make no fraudulent representations, such as would render a contract voidable under ordinary circumstances.³ But from the moment that he and others begin to organize themselves into an inchoate corporation he assumes toward his associates a fiduciary relation which extends to all who may subsequently come in. From that time forward he cannot, any more than they, retain an individual profit realized from dealing with the common property or funds, without the common consent.⁴ Thus, where a corporation is to be formed for the express purpose of purchasing a particular piece of property, the promoters occupy with respect to each other and to the corporation subsequently formed by themselves, a fiduciary relation which binds them to declare truthfully to their associates any personal interests they may have had in the matter. Without such disclosures they cannot legally profit at the expense of their associates; and if they are guilty of any misrepresentation of facts or suppression of truth with respect to their personal interests in the proposed purchase, the corporation is entitled to set aside the transaction, or recover compensation for any loss suffered.⁵ The law is well put by Mr. Justice Sharswood: "There are two principles applicable to all partnerships or associations for a common purpose of trade or business, which appear to be well settled on

³ *Old Dominion Copper Min., etc., Co. v. Bigelow*, 188 Mass. 315, 74 N. E. 653, 108 A. S. R. 479.

⁴ *Beal v. Smith*, 46 Cal. App. 271, 189 Pac. 341; *Pietsch v. Milbrath*, 123 Wis. 647, 101 N. W. 388, 102 N. W. 342, 107 A. S. R. 1017, 68 L. R. A. 945.

⁵ *Lomita L. & W. Co. v. Robinson*, 154 Cal. 36, 97 Pac. 10, 18 L. R. A. (N. S.) 1106; *Yeiser v. United States Board, etc., Co.*, 107 Fed. 340, 46 C. C. A. 567, 52 L. R. A. 724; *Brewster v. Hatch*, 122 N. Y. 349, 25 N. E. 505, 19 A. S. R. 498; *Pittsburgh Min. Co. v. Spooner*, 74 Wis. 307, 42 N. W. 259, 17 A. S. R. 149.

reason and authority. The first is that any man or number of men, who are the owners of any kind of property, real or personal, may form a partnership or association with others, and sell the property to the association at any price that may be agreed upon between them, no matter what it may have originally cost, provided there is no fraudulent misrepresentation made by the vendors to their associates. They are not bound to disclose the profit which they may realize by the transaction.

. . . The second principle is that where persons form such an association, or begin or start the project of one, from that time they do stand in a confidential relation to each other and to all others who may subsequently become members or subscribers, and it is not competent for any of them to purchase property for the purpose of such a company, and then sell it at an advance without a full disclosure of the facts."⁶

A promoter, as defined by the English statute of 7 & 8 Vict., chap. 110, sec. 3, is "every person acting, by whatever name, in the forming and establishing of a company at any period prior to the company" becoming fully incorporated. He is treated as standing in a confidential relation to the proposed company, and is bound to the exercise of the utmost good faith.⁷

The promoter is the agent of the corporation and subject to the disabilities of an ordinary agent. His acts are scrutinized carefully, and he is precluded from taking a secret advantage of the other stockholders. Accordingly, it has been held that, if persons start a company, and induce others to subscribe for shares, for the purpose of selling property to the company when organized, they must faithfully disclose all facts relating to the property which would influence those who form the company in deciding upon the judiciousness of the purchase. If the promoters are guilty of any misrepresentation of facts, or suppression of the truth in relation to the character and value of the property, or their personal interest in the proposed sale, the company will be entitled to set aside the transaction or recover compensation for any loss which

⁶ *Densmore Oil Co. v. Densmore*, 63 Pa. St. 43; *Burbank v. Dennis*, 101 Cal. 90, 35 Pac. 444.

⁷ *Bosher v. Richmond & H. Land Co.*, 89 Va. 455, 16 S. E. 360, 37 A. S. R. 879.

it has suffered.⁸ If promoters of a corporation have obtained an option for the purchase of property at a certain price, and have proceeded to form a corporation, representing to persons whom they induced to subscribe for its stock that such option would cost a larger price than they have agreed to pay, and if, after procuring such subscription, they purchase the property at the smaller price and charge the corporation the higher, it may sustain an action against them, and recover the difference between the two prices.⁹ The promoters are under a duty, if they sell to the corporation, to make the sale without profit, unless they disclose that they are receiving a profit.¹⁰

In those cases where the scheme of organization gives the promoters the power of selecting the directors who are to represent the company in the proposed purchase, they are bound to select competent and trustworthy persons who will act honestly in the interest of the shareholders. A purchase made from the promoters under these circumstances will not bind the company unless it was a fair and honest bargain.¹¹

§ 25. Contracts of Promoters, Whether Binding on Corporation Subsequently Formed.—Agreements made between the promoters and others prior to incorporation bind the promoters only as individuals. The promoters are not the corporation, and their contracts are not its contracts. Until organized a corporation has no being, franchises, or faculties. Its promoters or those engaged in bringing it into being, are in no sense identical with the

⁸ *New Sombraero Phosphate Co. v. Erlanger*, L. R. 5 Ch. Div. 73; *Bagnall v. Carlton*, L. R. 6 Ch. Div. 372; *Emma Silver Min. Co. v. Grant*, L. R. 11 Ch. Div. 918; *Hall v. Catherine Creek Development Co.*, 78 Ore. 585, 153 Pac. 97, L. R. A. 1916C 996.

⁹ *Yeiser v. United States Board, etc., Co.*, 107 Fed. 340, 46 C. C. A. 567, 52 L. R. A. 724; *Brewster v. Hatch*, 122 N. Y. 349, 25 N. E. 505, 19 A. S. R. 498; *Pittsburgh Min. Co. v. Spooner*, 74 Wis. 307, 42 N. W. 259, 17 A. S. R. 149.

¹⁰ *Victor Oil Co. v. Drum*, 184 Cal. 226, 193 Pac. 243.

¹¹ *New Sombraero Phosphate Co. v. Erlanger*, L. R. 5 Ch. Div. (Eng.) 73; *Brewster v. Hatch*, 122 N. Y. 349, 25 N. E. 505, 19 A. S. R. 498; *Simons v. Vulcan Oil & Min. Co.*, 61 Pa. 202, 100 A. D. 628; *Twycross v. Grant*, L. R. 2 C. P. Div. (Eng.) 469, 503; *Whaley Bridge Calico Printing Co. v. Green*, L. R. 5 Q. B. Div. (Eng.) 111; *Dickerman v. Northern Trust Co.*, 176 U. S. 181, 20 S. Ct. 311, 44 L. Ed. 423.

corporation, nor do they represent it in any relation of agency, and they have no authority to enter into preliminary contracts binding the corporation, unless so authorized by the charter.¹²

The general doctrine, as we have previously stated, is well established, and obtains both at law and in equity, that a corporation is a distinct entity, to be considered separate and apart from the individuals who compose it, and is not to be affected by the personal rights, obligations, and transactions of its stockholders; and this, whether said rights accrued or obligations were incurred before or subsequent to incorporation.¹³ There is a class of contracts, however, which are entered into between the promoters or prospectors of a contemplated corporation and third persons, on the faith of the corporation, intended to inure to its benefit, and which in point of fact do inure to its benefit, on which the corporation will be charged even in the absence of an express promise to perform, or ratification on the part of the company after it is *in esse*, on "the familiar principle that one who accepts the benefit of a contract which another volunteers to perform in his name and on his behalf is bound to take the burden with the benefit."¹⁴ And in those cases where "associates combine together to create a paper corporation to cover partnership or joint venture, and where the stockholders are partners in intention," and have resorted to the fiction of separate corporate entity to free themselves from individual obligations which had attached to them, with respect to the business they propose to carry on, prior to the organization of the company, courts of equity, when the ends of justice require it, will disregard and look beyond the fiction of corporate entity, and hold the corporation to a discharge of the liabilities resting on its members; and this may be done, although

¹² *Huson v. Portland, etc., R. Co.*, 107 Ore. 187, 211 Pac. 897, 213 Pac. 408; *Gardiner v. Equitable Office Bldg. Corp.*, 273 Fed. 441, 17 A. L. R. 431; *Kirkup v. Anaconda Amusement Co.*, 59 Mont. 469, 197 Pac. 1005, 17 A. L. R. 441.

¹³ *Morrison v. Gold M. G. M. Co.*, 52 Cal. 306; *Hawkins v. Mansfield G. M. Co.*, 52 Id. 515; *Gent v. M. & Mut. Ins. Co.*, 107 Ill. 658; *Caledonian Ry. Co. v. Helensburgh*, 2 Macq. (Scot.) 391; *Penn. Mat. Co. v. Hapgood*, 141 Mass. 147, 7 N. E. 22.

¹⁴ *Stone v. Walker*, 201 Ala. 130, 77 So. 554, L. R. A. 1918C 839; *Weatherby v. Texas, etc., Lumber Co.*, 107 Tex. 474, 180 S. W. 735, 7 A. L. R. 1440; *Gardiner v. Equitable Office Bldg. Corp.*, 273 Fed. 441, 17 A. L. R. 431.

some of the shareholders had not originally incurred the obligation sought to be enforced, provided they had notice of it before entering the corporation, and participated in the effort to avoid it.¹⁵ In England it has been held that in the absence of a charter or statutory provision a contract made by the promoters of a corporation on its behalf before incorporation cannot ratify or adopt it and thus make it binding upon it after incorporation, although an action may be maintained against it if it accepts the benefit of such a contract.¹⁶

A similar view has been taken by the supreme court of Massachusetts.¹⁷ A more liberal view is taken by the courts in other states, which hold generally that a contract made by the promoters of a corporation on its behalf may be ratified or adopted by the corporation which is then liable both at law and in equity on the contract itself and not merely for the benefits received.¹⁸ The American courts, however, insist in every instance on an express resolution or some other act by the corporation subsequent to organization showing an intent to be bound.¹⁹ Consequently it is held that a corporation is not liable, in the absence of ratification or adoption or of a charter or statutory provision imposing liability, for the salary of a superintendent or other person for services performed for it before its organization under a contract made by its promoters, although the contract may have been made on its behalf and with the understanding that it should be bound and although the promoters who made it have become its stockholders and officers.²⁰

¹⁵ *Davis Imp. Wrought Iron W. W. Co. v. Davis Wrought Iron W. Co.*, 20 Fed. 700; *Beal v. Chase*, 31 Mich. 490, 495, 532; *Moore & Handley Hardware Co. v. Towers Hardware Co.*, 87 Ala. 206, 6 So. 41, 13 A. S. R. 25-26.

¹⁶ *Kelmer v. Baxter*, L. R. 2 C. P. (Eng.) 174; *Melhado v. Porto Alegre, etc.*, R. Co., L. R. 9 C. P. 503; *In re Empress Engineering Co.*, 16 Ch. Div. 125; *In re Northumberland Ave. Hotel Co.*, 33 Ch. Div. 16.

¹⁷ *Bradford v. Metcalf*, 185 Mass. 205, 70 N. E. 40.

¹⁸ *Stanton v. New York, etc., R. Co.*, 59 Conn. 272, 22 Atl. 300; *Stone v. Walker*, 201 Ala. 130, 77 So. 554, L. R. A. 1918C 839.

¹⁹ *Ireland v. Globe Milling, etc., Co.*, 20 R. I. 190, 38 Atl. 116.

²⁰ *Western Screw, etc., Co. v. Cousley*, 72 Ill. 531; *Little Rock, etc., R. Co. v. Perry*, 37 Ark. 164; *Carey v. Des Moines Co-operative Coal, etc., Co.*, 81 Iowa 674, 47 N. W. 882; *Tuttle v. George A. Tuttle Co.*, 101 Me. 287, 64 Atl. 496, 8 A. C. 261, 262.

To render the contract of the promoters binding on the corporation it is not necessary that its adoption should be express; it may be shown from acts or acquiescence of the corporation or its authorized agents, as any similar contract may be, and if the corporation subsequently recognizes and treats such contract as valid, this makes it, in all respects, what it would have been if the requisite corporate power had existed when it was entered into.¹

§ 26. Safeguarding the Interests of Third Persons.—While the system of statutory regulation is in general designed to safeguard the interests of third persons in dealing with corporations and those connected with them, in view of the fact that the civil liability of individuals for their acts as agents of the corporation often proves of no avail as a deterrent, special penal statutes are found in most cases covering some of the most flagrant customary abuses noted in the past; so that, while fraud in general does not subject one to criminal punishment, that connected with the inception, and, as will be noted later, the conduct of a corporation entails severe penal consequences.

¹ *Western Inv. Co. v. Davis*, 7 Indian Ter. 152; 104 S. W. 573, 15 A. C. 1134; *McArthur v. Times Print. Co.*, 48 Minn. 319, 51 N. W. 216, 31 A. S. R. 653.

CHAPTER IV.

PROMOTION AGREEMENTS.

- § 27. Promotion Agreements.
- § 28. Promoters' Contracts Should Contain Specific Terms.
- § 29. Promotion Agreement.
- § 30. Promoters' Agreement.
- § 31. Promoters' Agreement Providing for New Corporation Combining Assets of Existing Corporations.
- § 32. Promoters' Agreement Providing for New Corporation to Take Over Existing Concerns.
- § 33. Promoters' Agreement for Promotion of New Corporation and Financing the Same.
- § 34. Promotion Agreement With Syndicate Manager.
- § 35. Proceedings Taken to Carry Out Promoters' Agreement.

§ 27. **Promotion Agreements.**—The term promotion agreement is applied to the contract of the promoter with the parties projecting the organization of the proposed corporation; and also to the agreement among the prospective subscribers. Frequently both are embraced within the same instrument. The vital question always in such agreements is that there shall be such a consideration moving between the contracting parties as to enable one to enforce it against the other. If the terms are definite, the mutual promises are frequently a sufficient consideration to support the agreement. A distinction exists between promotion agreements and stock subscriptions made prior to incorporation, though it would sometimes be difficult to point it out. This difficulty arises from the fact that the same agreement often combines both the promotion and the subscription feature.

§ 28. **Promoters' Contracts Should Contain Specific Terms.**—Such an agreement may be simple and concise, or very elaborate. It should, in any event, however, be so carefully drawn that no question can subsequently arise as to the exact obligation and interest of each of the contracting parties. For instance, where, as is oftener the case than otherwise, the parties participating in the formation of the corporation are to take part or all of its stock, and property is to be turned over or conveyed to it in payment, there should be a distinct understanding beforehand, just

what property, real or personal, or both, each person is to contribute, the value in money at which it is to be appraised, or if it is simply to be accepted for stock without appraisal, the number of shares that are to be issued for it. It is always satisfactory, and may obviate disagreements and litigation if the exact character of the corporation to be formed, its purposes, the various interests, etc., be accurately and specifically set forth. The following form contains such specifications, and provides compensation to the promoter, consisting of both money and shares:

§ 29. Promotion Agreement.

This Agreement, made and entered into this 1st day of March, 1926, by and between John Black, of Cincinnati, State of Ohio, party of the first part, and John White, and John Gray, of Chicago, State of Illinois, parties of the second part, witnesseth:

That the parties hereto agree to form immediately a corporation under the laws of the State of Delaware for the following purposes, viz.: To buy, sell, lease and mortgage real estate; to buy, sell and hypothecate all kinds of personal securities; to loan money on any kind of security; to mine for oil, gas, water, asphaltum, or any other substance; to buy, sell and lease oil lands; to construct oil wells; and to do anything necessary to carry on a general business for the production and sale of oil, water, gas, asphaltum, or any other substance mined from the ground; to buy and sell oil, gas, water, asphaltum, and like products upon commission, or otherwise; to construct tanks and houses for the storage of oil; to do a general oil storage business; and to conduct a general mercantile business.

That the amount of the capital stock of the said corporation shall be \$1,000,000 divided into 100,000 shares of the par value of \$10 each, all of which shall be issued to the party of the first part (except a sufficient amount of said stock to qualify the directors of said corporation) in consideration of the assignment by the first party to said corporation of the lease hereinafter referred to.

The corporation to be so formed shall be known as the Peruvian Oil Company and shall have six directors, three of whom shall be chosen by the party of the first part and the remaining three by the parties of the second part; and the selection by the party of the first part and the selection by the parties of the second part shall be final and conclusive as to both parties hereto, that is to say, the directors chosen by the party of the first part shall be ratified and confirmed by the parties of the second part, and the directors chosen by the parties of the second part shall be ratified and confirmed by the party of the first part.

It is further agreed that the first party shall assign to the corporation so formed a lease of all the lands described in and upon the terms and conditions set forth in a certain lease, a copy of which is hereto attached and made a part hereof, and will upon the execution of said assignment

and the issuance of said stock make over to the parties of the second part 50,000 shares thereof.

It is further agreed that the party of the first part shall name the President, and the parties of the second part shall name the Secretary and the Treasurer for the corporation to be formed for the first year of its existence; and it is further agreed that no salary shall be paid to any officer of said corporation until hereafter mutually agreed upon between the parties of the first part and second part.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

JOHN BLACK, (Seal.)

JOHN WHITE, (Seal.)

JOHN GRAY, (Seal.)

§ 30. Promoters' Agreement.

In consideration of six thousand dollars (\$6,000.00) in cash by draft, and the agreement of Milton Price, trustee for William Irvine of 37 Montgomery Street, San Francisco, California, to have transferred to me sixteen thousand dollars (\$16,000.00) of bonds as hereinafter set forth, I, Richard Thompson, hereby agree to sell to said Milton Price all options owned by me and expiring January 16, 1927, for the purchase of land situated in the Township of Lafayette, County of Contra Costa, State of California, which stand in my name, and which are of record in Contra Costa County, State of California, to which reference is hereby made.

It is a condition of this sale that said Milton Price and said William Irvine and their associates shall proceed to organize a corporation to develop a water power of not less than sixteen thousand (16,000) horse-power, at or near Lafayette, within the space of twelve months from this date, and upon the completion of the organization of said corporation to deliver to me first mortgage bonds of the corporation for sixteen thousand dollars (\$16,000.00); said corporation not to issue bonds in excess of eighty (80) per cent of the amount paid, laid out and expended in the purchase of the various tracts of land and the land covered by these options, and in the development of said water power, or that said Milton Price and said William Irvine and his associates shall have the privilege of paying to me sixteen thousand dollars in cash instead of bonds.

If said draft for six thousand dollars (\$6,000.00) is not paid upon presentation, then this instrument is to become absolutely null and void, and if said money is paid and the corporation is not organized, or the bonds hereinbefore specified not issued and delivered to me by January 16, 1927, or sixteen thousand dollars (\$16,000.00) in cash paid in lieu thereof, time being of the essence of the contract, then this sale shall be null and void, and the sum of six thousand dollars (\$6,000.00) paid to me at this time shall not be accounted for by me, but shall be retained by me as the amount of liquidated damages agreed upon between the parties hereto for a violation

of the said contract, and all options to be returned to me the same as if this sale had not been made.

Dated this 8th day of July, 1926, San Francisco, California.

MILTON PRICE, Trustee.

RICHARD THOMPSON.

§ 31. Promoters' Agreement Providing for New Corporation Combining Assets of Existing Corporations.

Memorandum of agreement made this 1st day of November, 1926, between James Wilson, Henry McClure, and Isaac Hinton, parties of the first part, Clifford Field, party of the second part, and Frank McDonald, party of the third part:

The parties of the first, second, and third parts agree to and with each other, to forthwith organize a corporation under the laws of the State of Massachusetts, by the name of the Royal Trade Company, or other name to be agreed upon by the parties hereto, with an authorized capital stock of fifty million dollars (\$50,000,000), of which twenty-five million dollars shall be 6 per cent non-cumulative preferred stock, and twenty-five million dollars shall be common stock.

There shall be a section in the Articles of Incorporation providing that no mortgages or incumbrances of any kind shall be placed upon any of the property of the proposed corporation as a prior lien to such preferred stock, and any profits made by the corporation up to 6 per cent on the preferred stock, or any part thereof, which may be earned in any one year, shall first be applied to the preferred stock. Profits realized in any one year beyond this 6 per cent shall be applied to the common stock only.

The parties of the first part agree to undertake to deliver to the proposed corporation, in such manner as counsel may advise, all of the issued stock of the Pacific Trade Company, a corporation organized under the law of the State of Massachusetts, with an authorized capital stock of twenty million dollars, of which three million six hundred and seventy-three thousand dollars is preferred, and the remainder common stock, or all the property real and personal (and the property of all corporations owned or controlled by it), together with its or their good will, business, and trade mark. The party of the second part agrees to deliver and have conveyed to said corporation in a manner advised by counsel the entire business and good will of the American Trade Company and the Panama Trade Company, together with all of the real and personal property of the said American Trade Company and the Panama Trade Company, used by them or either of them, and pertaining to their business, or that of either of them, and the good will and trade marks of said business of said company.

The party of the third part agrees to have conveyed to said corporation, in a manner advised by counsel, the business and good will of James Adams Company, together with all of the real and personal property of

said James Adams Company used by it and pertaining to its business, and the good will and trade marks of said business of said corporation.

The consideration of such conveyance to the proposed corporation hereinabove set forth by said parties of the first part, shall be fifteen million dollars \$(15,000,000) of the preferred stock of said corporation, and five million dollars (\$5,000,000) of the common stock of said corporation, applied pro rata to the total present issue of preferred and common stock of the Pacific Trade Company.

The consideration of such conveyance to the proposed corporation, as hereinabove set forth by the said parties of the second and third parts, shall be five million dollars (\$5,000,000) of the preferred stock of the proposed corporation, and fifteen million dollars (\$15,000,000) of the common stock of the proposed corporation, to be issued to the American Trade Company, the Panama Trade Company, and the James Adams Company, in such proportion as the parties of the second and third parts may hereinafter notify the proposed corporation.

It is agreed that the parties of the first part shall deliver and convey to the proposed corporation all of the assets of the Pacific Trade Company, which (exclusive of good will and trade marks) shall be of the fair value of at least three million six hundred and seventy-three thousand dollars (\$3,673,000), all of which shall be good, useful, and available and free of debts, liens, and liabilities. All real estate and machinery, stocks in trade, raw material, wrought and in process, supplies are to be taken at book value, not exceeding cost. The book accounts included in these assets are to be satisfactorily guaranteed.

The parties of the second and third parts shall deliver and convey to such proposed corporation all of the assets of the American Trade Company, the Panama Trade Company, and the James Adams Company, pertaining to the business of said company respectively, which assets (exclusive of good will and trade marks), shall in the aggregate be of the reasonable value of at least three millions of dollars (\$3,000,000), all of which shall be good, useful, and available, and free of debts, liens, and liabilities. All real estate and machinery, stocks in trade, raw material, wrought and in process, supplies, are to be taken at book value, not exceeding cost. The book accounts included in said assets are to be satisfactorily guaranteed.

The deliveries and conveyances herein referred to shall be dated November 1, 1926. The proposed corporation shall accept and assume all contracts of the Pacific Trade Company, the Panama Trade Company, the American Trade Company, and the James Adams Company.

In the event that the proposed corporation shall pay any money, or deliver any article or thing on account of any obligation by way of rebate or otherwise, issued or undertaken by the Pacific Trade Company or the American Trade Company or the Panama Trade Company or the James Adams Company, prior to November 1, 1926, the amount so paid by the proposed corporation, or the value of the article or thing so delivered by the corporation, in conformance of said obligation, shall be refunded to

the proposed corporation by the corporation or party whose obligation was thus performed by the proposed corporation, though this shall not be construed as binding on the proposed corporation to pay any such obligation, unless it shall elect to do so; if any manufactured goods, sold by the Pacific Trade Company, the American Trade Company, the Panama Trade Company, or the James Adams Company, shall have to be taken or transferred by the proposed corporation, the amount of loss or injury sustained by the proposed corporation, by such taking or transfer, shall be paid to it by the corporation or party which sold such goods.

There shall be appointed a committee of four to determine the available assets, exclusive of real estate and machinery, of the Pacific Trade Company, the American Trade Company, the James Adams Company, and the Panama Trade Company. Two members of this committee shall be appointed by Henry McClure, and two by Clifford Field. If the decision of said committee as to the availability of any such assets shall not be satisfactory to its owner, and can not be made satisfactory within three days after the report of the committee thereon, the difference of opinion shall be settled by an arbitrator, selected by said committee, whose decision shall be final and conclusive, and shall be made within three days after the time of his selection.

Of the expenses of organization of the proposed corporation, which must be paid in advance of the organization, one-half shall be advanced by the parties of the first part, and the other half by the parties of the second and third parts, and all of such advance shall immediately after the organization be refunded to the proposed corporation.

The proposed corporation shall be organized by and under the advice of the firm of Duke, Moore & Duke and Harry Wilson, none of whom shall make any charge to said proposed corporation for any services rendered by them. The said firm of Duke, Moore & Duke to look for their compensation solely to the parties of the first part, and the said Henry Wilson to look for his compensation solely to the parties of the second and third parts. It is understood, however, that the new corporation shall pay a fee to the firm of Duke, Moore & Duke, in the event that said corporation shall procure through their advice the acquisition, upon satisfactory terms, of Whittier, Fuller Co., it being understood that such compensation shall be fifteen thousand dollars (\$15,000), if said Whittier, Fuller Co. agrees to sell to the proposed corporation, upon terms satisfactory to the proposed corporation, within sixty (60) days after date hereof; or only seven thousand five hundred dollars (\$7500) if after said sixty (60) days, and within four (4) months of this date, and if not agreeing so to sell, within at least four (4) months, then no fee to be paid to said Duke, Moore & Duke.

It is agreed that the parties of the first, second, and third parts hereto, respectively, shall have made known and imparted to the designated agent of the proposed corporation the processes, formulae, and recipes for the preparation and manufacture of the articles of trade now manufactured by and employed by the Pacific Trade Company, the American Trade Company, the Panama Trade Company, and the James Adams Company.

It is agreed by the parties of the first part that each of the directors of the Pacific Trade Company shall enter into contracts with the proposed corporation not to go into the business of manufacturing any of their present products in trade, in the United States, for a period of ten years, either directly or indirectly, or to take any interest in manufacturing such products in such country, during the said time, without the written consent of the proposed corporation, and that similar contracts shall be entered into by the American Trade Company, the Panama Trade Company, and the James Adams Company.

The property and business of the new corporation shall be managed by a board of twelve (12) directors, divided into classes as the committee above named may agree. Shares of preferred and common stock shall have equal powers of voting.

In the By-Laws it shall be provided that the President, as such, shall receive a salary not exceeding sixteen thousand dollars (\$16,000) a year; that the Vice President shall receive a salary not exceeding six thousand dollars (\$6000) a year; that the Treasurer shall receive a salary not exceeding six thousand dollars (\$6000) a year, and that the Secretary shall receive a salary not exceeding six thousand dollars (\$6000) a year. The By-Laws shall be amended only by a vote of at least two-thirds ($\frac{2}{3}$) of the whole board of directors. A quorum of said board shall consist of four directors. The By-Laws shall provide that the stock shall be forthwith listed on the New York Stock Exchange.

It shall be provided in the articles of incorporation that, if counsel conclude that such provision can be legally introduced into the same, the preferred stock shall not be increased beyond the amount of twenty-five million dollars (\$25,000,000); without the assent of at least seventy-five (75) per cent of the preferred stock.

It is agreed that the details of organizing the proposed corporation and the carrying out of this agreement, shall be determined by a committee composed of Henry McClure, James Wilson, Henry Bradford, and Frank McDonald. They shall proceed forthwith to carry the same into effect and to prepare By-Laws to be submitted for adoption, and any question that may arise between a contracting party either in the formation of the proposed corporation, or the conveying of any property, the settlement for which is not provided for herein, shall be determined by the decision of three-fourths ($\frac{3}{4}$) of said committee.

To the performance of the agreement hereinbefore made, each of the parties hereto pledges his earnest bona fide efforts; but it is to be understood that no signer hereto incurs any personal liability for the non-performance of any part of this agreement.

Witness our hands and seals, at the City of Boston, this 1st day of November, 1926.

JAMES WILSON,
HENRY MCCLURE,
ISAAC HINTON,
CLIFFORD FIELD,
FRANK McDONALD.

§ 32. Promoters' Agreement Providing for New Corporation to Take Over Existing Concerns.

This Memorandum of Agreement, entered into this 3rd day of October, 1926, by and between James Wilson of Albany, New York, and Henry McClure, of Albany, New York, partners, doing business under the name and style of Wilson & McClure, parties of the first part; and the American Trade Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, party of the second part, and the Panama Trade Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, party of the third part,

WITNESSETH:

That the parties of the first part, as an inducement to the American Trade Company and the Panama Trade Company to enter into this agreement, make representations and hereby warrant to said American Trade Company and to said Panama Trade Company:

(1) That as partners in the business of manufacturing and selling perfumes under various brands they have for the past four years done a business as follows: (Here state business.)

(2) That said parties of the first part own and have used, without interference, or adverse claim, the trade mark used by them, and that they will be able to make the conveyances hereinafter referred to, and that said conveyances when so made will convey to the purchaser all of their property and good will, needful and useful in carrying on the business, free from any debts or liabilities, and with full power and right in the purchaser to make use of the brands and trade marks conveyed, as well as the tangible property and the trade name of Wilson & McClure.

It is accordingly hereby agreed that the American Trade Company and the Panama Trade Company may send their expert accountants and agents to examine the books, papers, property, and business of the parties of the first part, in order to verify the representation hereinabove made, and that said parties of the first part will afford said experts and agents full and unrestricted opportunity to make such examination.

And that if upon the completion of such examination such experts and agents of the American Trade Company and the Panama Trade Company shall agree and report that the representations of the parties of the first part, hereinabove made, are substantially true, then and in that case a corporation shall be formed under the laws of the State of Massachusetts with power to engage in the business of manufacturing and selling perfumes of every sort and description, and with such other powers as the American Trade Company and the Panama Trade Company shall desire or be advised are desirable, with an authorized capital stock of twenty million dollars (\$20,000,000).

The new corporation shall be organized and the examinations hereinbefore provided for, and hereinafter provided for, shall be made as expeditiously as possible, so that as soon as practicable after January 8, 1927 (conveyances and inventories to be as of that date), the parties of

the first part shall convey to the new corporation their entire perfume business, including name, good will, trade mark, trade name, symbols, patents and copyrights, and rights analogous thereto, recipes of manufacture, and including also stock on hand, whether manufactured, in process of manufacture, or fully manufactured, labels, wrapping materials, advertising matter and supplies, machines and appliances suitable and useful in the manufacture of perfumes, and such as have been used by the parties of the first part in their manufacture of perfumes, real estate in Albany, New York, suitable for the business of said new corporation, and all the property whether herein specifically mentioned or not, used by the parties of the first part, or owned by them and available in the business of perfume manufacturing (except cash on hand, bills receivable, accounts receivable, and contracts not hereinafter scheduled belonging to said parties of the first part, which cash, bills receivable and accounts receivable, and contracts not hereinafter scheduled, are hereby expressly excluded from the contemplated conveyance); the said conveyance to be of the exclusive right to the use of the name of the copartners, Wilson & McClure, as well as of the name or names of either of the partners, and any name which said partners, or the copartnership has a right to use on its label or advertisement.

It is agreed that the conveyance referred to shall contain warranties by the parties of the first part, jointly and severally, that the business and property conveyed are free from any lien, debt, liability, encumbrance, or assessment of any kind, legal or equitable, including all taxes of whatever source for the year 1926, and that the trade marks conveyed are valid trade marks; which said parties of the first part have the right to convey, and that they will jointly and severally warrant and defend the title made to said new corporation against all claim whatsoever and all persons whomsoever.

The parties of the first part at the time of said conveyance, and in the same instrument, will covenant and agree, each for himself, that he will not for a term of twenty years from the date of said conveyance, directly or indirectly engage in the manufacture of perfumes of any kind or description, or distributing the same, or own stock in any corporation other than said new corporation, and the American Trade Company and the Panama Trade Company so engaged in such manufacture or distribution, within the several states, colonies, or dependencies of the United States, or the several countries or nations of Europe, except for and with the written consent of said new corporation, authorized by a majority vote of all its directors, and that it will not permit the use of their names, or either of them, whether in connection with each other, or separately, or with or without other names or initials within said time hereinbefore mentioned, to wit, twenty years.

The parties of the first part, at the time of said conveyances and in the same instrument, shall each for himself, agree to enter into and devote his whole time and best efforts to the service of the new corporation, and if the new corporation desire so long to retain him, to remain in said business for five years, at the following salaries respectively, all payable in equal monthly installments, to wit: James Wilson twelve

thousand dollars (\$12,000) per year, and Henry McClure twelve thousand dollars (\$12,000) per year. This contract of employment shall not, however, require the new corporation to retain the services of either of the parties of the first part, beyond the period of one year from and after the date of said conveyance, and after said first year's term the new corporation may at any time dispense with the services of either of the parties of the first part, without liability to him for any portion of his said salary so agreed upon, for the unexpired term of five years.

The parties of the first part, at the time of said conveyance, and in the same instrument, shall further, each for himself, agree to instruct at any time thereafter the designated agents of the new corporation as to any of the formulae, recipes, or processes, and that he will not make known to any other than such agents so designated, or make use of any such formulae, recipes, or processes.

The new corporation in consideration of the conveyances, covenants, and agreements by the parties of the first part, as hereinbefore set forth, to pay to the parties of the first part the sum of two million five hundred thousand dollars (\$2,500,000) in cash, which said amount shall be in full payment for the trade name, good will, trade mark, symbols, recipes, copyrights, patents, and rights analogous thereto, and all other intangible assets belonging to the parties of the first part of whatsoever kind in any way useful or available in the perfume business, except the book accounts, bills receivable, and contracts not scheduled, and a further sum for the tangible assets useful and available in the perfume business, to be arrived at as follows: The real estate, buildings and unmanufactured stock, stock in process of manufacture and that fully manufactured, at the cost thereof to the parties of the first part, as shown by the books of the parties of the first part, if the same had been accurately kept. In arriving at the cost of any such property, no amount is to be allowed for interest on the investment made by the parties of the first part, but in the case of stock the actual value of carriage, storage, and insurance is to be considered. Machinery and fixtures, such as are useful and available in the perfume business, are to be taken at their actual and agreed value, and in no case to exceed the cost thereof. Wrapping material, labels, and supplies, other than manufactured stock, are to be taken just as manufactured stock, provided, however, that none shall be taken by said new corporation, except such as will be useful and available to it in its business. Such leaseholds as the said parties of the first part have, useful to said new corporation in its business, shall be turned over to said new corporation without premium. If parties of the first part have made advances on contracts for purchases of stock, and additional amounts are due the vendors thereof, the said new corporation will upon receipt of such stock, if said contract is taken by said new corporation, pay for the same by returning to the parties of the first part the amount advanced by them, without interest, and settling with the vendor for the balance due. No contract of whatever source, not set out in schedule "A" hereto attached shall be taken by said new corporation, unless the same is agreed to by

R. N. Willits, who is the agent appointed hereby for both the American Trade Company and the Panama Trade Company, to pass on such contract.

Said new corporation shall be organized under the direction of the legal advisers of the American Trade Company, and the Continental Trade Company, and there shall be no charge to said new corporation for legal advice and services in the organization thereof. The expense of said organization, other than that for legal advice and service, shall be borne by said new corporation. The stock of said new corporation shall be issued for cash at par, and it shall be issued and paid for in proportion of eight per cent (8%) to the parties of the first part, or their nominees, forty-six per cent (46%) to the American Trade Company or its nominees, and forty-six per cent (46%) to the Panama Trade Company or its nominees, and each of the parties shall heed any call made by the directors for cash in this way: Eight per cent (8%) of the amount so called to be paid by the parties of the first part or their nominees; forty-six per cent (46%) by the American Trade Company or its nominees, and forty-six per cent (46%) by the Panama Trade Company or its nominees. Stocks shall issue to the amount for which payments are made, and at the time of such payments, instead of being credited to the subscribers paying the same on their respective stock subscriptions.

In case the directors of the new corporation desire to purchase any other property or business and to pay for the same in stock and not in cash, the stock necessary and used in such purchase shall be deducted equally from the amount that under this agreement would be coming to the American Trade Company, and the Panama Trade Company, and the payments required by them shall likewise abate.

Upon the organization of said new corporation there shall be provided for a paid up capital stock of twenty thousand dollars (\$20,000), of which the nominees of the American Trade Company and the nominees of the Panama Trade Company shall hold eighteen thousand six hundred dollars (\$18,600), and the parties of the first part shall hold fourteen hundred dollars (\$1400), and these first stockholders shall organize and elect a board of directors, and thereafter such board of directors shall control the operation of said new corporation, controlled only by the provisions of this agreement. The said nominees of the American Trade Company and the Panama Trade Company shall select a name for the new corporation, and fix the number of directors.

In witness whereof, and of all the foregoing, the said parties of the first part have caused this instrument to be signed by partnership name "Wilson & McClure," by James Wilson, one of its active partners, and each has individually set his hand and seal hereto; and the said party of the second part has caused this instrument to be signed in its corporate name by its president, and its corporate seal to be affixed, attested by its secretary; and the said party of the third part has caused this instrument to be signed in its corporate name by its president and its corporate seal to be affixed, attested by its secretary.

(Signatures.)

§ 33. Promoters' Agreement for Promotion of New Corporation and Financing the Same.

This agreement, dated this 17th day of July, 1926, between L. A. Mason of San Francisco, California, hereinafter called "the Manager," party of the first part, and the subscribers hereto, severally, parties of the second part, each of whom is hereinafter termed "a Subscriber," and all of whom, together with the Manager, constitute the Syndicate;

Whereas, The Grant Oil Company, a (California) corporation, organized for the purpose of developing certain oil properties in San Luis Obispo County, and which is the owner of large oil properties in said county, has given an option to one H. A. Devlin to acquire four hundred (400) acres of its said properties, together with the rig and appliances thereon, which rig and equipment and work already done are estimated to be worth fourteen thousand dollars (\$14,000), in consideration of the development of the well now sunk thereon to a point where it will be a paying well; and

Whereas, Said H. A. Devlin has agreed to turn over said option to a corporation having a capital stock of fifty thousand (50,000) shares, of the par value of ten dollars (\$10.00) each, hereafter to be formed for the purpose of accepting a conveyance of said properties in consideration of the issuance and delivery to himself and the Manager of thirty-five per cent (35%) of the stock thereof; and

Whereas, The said oil properties are only partially developed for the want of necessary funds on the part of said corporation; and

Whereas, Oil has been discovered on said lands by the sinking of a well to a depth of seven hundred (700) feet, but not to such a depth as to produce oil in paying quantities; and

Whereas, The stockholders of said Grant Oil Company are desirous and willing to convey the properties of said company and to have executed an agreement with the Manager to that end and purpose in consideration of the development of a paying well upon the said four hundred (400) acre tract, upon which the said Grant Oil Company has given an option to said Devlin as aforesaid; and

Whereas, It is necessary to raise the sum of six thousand dollars (\$6000) in order to complete said well and to develop it to such an extent that it may be definitely known whether or not oil may be produced in paying quantities; and it is a part of the plan contemplated by this agreement that not to exceed thirty-five (35) per cent of the stock shall be sold to the subscribers hereto for the purpose of raising said sum of money;

Now, therefore, This agreement witnesseth, that in consideration of the premises, and the mutual covenants and agreements hereof, the parties hereto agree, and the subscribers severally agree with each other and with the Manager as follows, to wit:

1. This agreement shall be binding as soon as a sufficient number of subscribers have signed this agreement for the amounts set opposite

their names, aggregating a total of not less than six thousand dollars (\$6000); said subscribers shall become entitled to capital stock of the corporation to be formed at the rate of five dollars (\$5) per share, according to the amount of his subscription, provided, however, that no stock shall be issued until the option aforesaid upon the property of the Grant Oil Company shall have been conveyed to the said corporation; and no corporation shall be formed unless the Manager shall have, prior thereto, obtained a contract sufficient to compel said Grant Oil Company to convey its properties to the said corporation to be formed, within ten (10) days after its incorporation.

2. The subscribers shall be called upon to make payments only ratably, according to the several amounts of their subscriptions, but each subscriber shall be responsible to the full extent of his subscription, without regard to performance or nonperformance by any other subscriber. Subscriptions shall be payable as follows:

One-fourth ($\frac{1}{4}$) thereof to the Manager as soon as this agreement becomes binding and effective as aforesaid; one-fourth ($\frac{1}{4}$) thereof to the Manager within fifteen (15) days thereafter, and one-half ($\frac{1}{2}$) thereof upon the issuance and delivery of stock of said corporation to be formed.

3. Prior to the conveyance of an option upon the properties of the Grant Oil Company to the said corporation to be formed, the Manager shall hold all sums received and collected on account of subscriptions hereunder in trust for the syndicate, and as soon as the option upon the properties aforesaid shall have been so conveyed, the said moneys shall be deposited in some bank to the credit of the corporation and delivered over to the proper officers of said corporation, who shall deliver to the Manager a proper receipt and release for the full amount so collected and delivered.

4. If, for any reason, the properties above described should not be acquired as herein contemplated, or if, for any reason, said corporation shall not have been formed within a period of three months from the date hereof, or if permission of the Corporation Commissioner of the State of California to issue the stock aforesaid shall not have been obtained within said period of time, the Manager shall return to the subscribers the full amount of the moneys paid by all of the subscribers hereunder, according to the amount of each subscriber's payment, respectively, without any deduction for expenses of the Manager or the syndicate incurred in forming said syndicate, or negotiating for said properties, and upon the payment of said sums, this agreement shall become null and void and of no effect.

5. The Manager shall give suitable receipts for any moneys paid to him by virtue of the provisions of this agreement.

In witness whereof, the parties hereto have hereto affixed their signatures, the day and year first above written.

L. A. MASON,
Manager.

SUBSCRIBERS.

NAME	ADDRESS	SUBSCRIPTION In face value of stock subscribed	ACTUAL AMOUNT OF PURCHASE PRICE

§ 34. Promotion Agreement With Syndicate Manager.

Memorandum of Agreement.

We, the undersigned, being residents and property owners in and about La Jolla Park, or otherwise interested in the maintenance of transportation between that point and the City of San Diego proper, in consideration of the mutual promises herein contained, do hereby promise and agree to and with each other as follows:

1. The undersigned hereby form a syndicate for the purpose of:

(a) Acquiring the Right-of-Way and Tracks now belonging to the Los Angeles and San Diego Beach Railway, commencing at La Jolla and running thence to and terminating at some point near Braemar.

(b) Financing, promoting and effecting the conversion of said line into an electric trolley line.

(c) Acquiring such franchises and rights-of-way from Braemar to Mission Beach as may be necessary to connect said line with the line of the Bay Shore Railway at Mission Beach.

(d) Financing, promoting and effecting the construction of a line over said last named route to connect said line of the Los Angeles and San Diego Beach Railway Company with the line now owned and operated by the Bay Shore Railway Company.

(e) Entering into such traffic and other arrangements with the San Diego Railway Company, Bay Shore Railway Company and other companies as may be suitable in order to secure the operation of electric cars between San Diego and La Jolla.

2. We hereby appoint Theodore S. McLaughlin the manager of this syndicate, and our agent, for the purpose of carrying into effect the provisions of this contract and we authorize and empower him to do and perform such acts and things, and to make and enter into such contracts and agreements as may be appropriate and proper, in order to carry into effect the foregoing purposes.

3. We authorize said manager to cause to be incorporated under the laws of the State of California, a corporation having such capital stock as may be approved by the Railroad Commission of the State of California, and to turn over to said corporation any subscription moneys received by

him and not disbursed by him pursuant to this agreement, and likewise to cause the property above referred to, or such portion thereof as he may acquire, to be conveyed to such corporation, upon such terms as may be approved by the said Railroad Commission.

4. Any moneys paid out under order of the Railroad Commission by the sureties on a certain undertaking filed with the Railroad Commission in order to prevent the dismantling and sale of the Los Angeles and San Diego Beach Railway shall be reimbursed said sureties by the syndicate, said expense having been incurred in order to enable this syndicate to be formed and said property acquired by it.

5. We hereby severally subscribe and promise to pay to said syndicate manager when and as notified by him, the sums set opposite our respective names, which sums shall be the limit of our respective liabilities from whatsoever cause under this contract, and any unpaid portion of our said subscription shall be payable to said corporation so to be organized upon call of the board of directors thereof.

6. We agree that each of us shall receive in satisfaction of our respective subscriptions, such stocks or bonds as may be authorized by the Railroad Commission of the State of California to be issued by the said corporation for the purposes herein specified, in such proportion as our respective subscriptions bear to the total amount subscribed.

7. Should the purposes for which this syndicate is formed not be fully carried out as herein contemplated, any moneys paid hereunder shall be returned to the subscribers pro rata less any disbursements made by the manager pursuant hereto.

8. Said manager may be removed at any time and a new manager substituted in his place at any time by an instrument in writing, signed by three-fourths in amount of the subscribers hereto.

9. This agreement shall not be binding upon any of the parties hereto until subscriptions aggregating fifty thousand dollars (\$50,000) have been made hereto.

10. This agreement may be in several separate papers and all parties who shall subscribe their names to this paper or to other papers substantially identical herewith, shall be deemed parties to this agreement, and each and every subscriber hereto affixing his name thereby covenants and agrees to and with such parties as subscribe their names to papers identical or substantially identical herewith, with the same force and effect as if the names of such other parties were hereunto subscribed.

Name	Amount
.....
.....

§ 35. Proceedings Taken to Carry Out Promoters' Agreement.—Usually a meeting is held among the subscribers, after the desired amount in subscriptions is obtained, and a number of

them are selected to execute articles. Those so selected usually designate themselves in the articles as directors for the first year, and specify the amount of stock which has been subscribed, and by whom. It is necessary, in order that they may be bound, that all who have subscribed be named in the articles. At such preliminary meetings a committee is usually appointed to procure further subscriptions. Such committee may also be empowered to collect such subscriptions as are made payable prior to incorporation, or some bank may be designated to hold all subscription papers in escrow and to receive payments. The business in hand may be so urgent as not to admit of the delay incident to the complete organization before consummating it. For instance, a number of individuals may obtain a short option upon a tract of mineral or agricultural land, or a valuable water right, the exercise of which is the main incentive to the formation of the corporation, and which would be lost by lapse of time, if not exercised before the corporation can be created and fully organized. In all such cases the appointment of a committee or general agent prior to incorporation is necessary. Whatever money is needed to secure the property or right to be exploited by the corporation must be deposited with such committee or agent, and the subscribers advancing it are entitled to credit therefor on subscription account. The money may be paid to the persons who have given the option or deposited, together with deeds, agreements, etc., from the latter to the proposed corporation, in escrow.

CHAPTER V.

OPTIONS.

- § 36. Options.
- § 37. Option to Purchase Stock on Deferred Payments.
- § 38. Option or "Refusal" on Capital Stock at a Price as Low as Any Other Bona Fide Offer.
- § 39. Option to Seller to Repurchase.
- § 40. Clauses of Agreement by Vendor to Repurchase Shares at Option of Purchaser at Purchase Price and Interest Thereon, and Notice of Election Thereunder.
- § 41. Option to Purchaser to Return Stock and Receive Back Price Paid.
- § 42. Option Clause to Majority of Stockholders to Appraise and Purchase Shares of Stockholders Becoming Undesirable Associates, etc.
- § 43. Option by Stockholders to Sell Their Shares and Interest in Business of Corporation to a Promoter of a Consolidation.
- § 44. Provisions of Articles of Incorporation Giving the Corporation the First Refusal on Shares of Original Subscribers Desiring to Sell.
- § 45. Agreement for Sale and Purchase of Options in Exchange for Bonds of Corporation to Be Organized and on Condition That the Corporation Shall Be Organized.
- § 46. Agreement to Give Option on Capital Stock to Syndicate Which Agrees to Do Exploration Work on Mines.
- § 47. Option Agreement for Property to Be Taken Over by Proposed Corporation.

§ 36. **Options.**—The promoters quite commonly commence their operations by obtaining one or more options on the property which they propose to acquire for the corporation or to have the corporation acquire. The essential things about options are that they should be definite and certain and that they should be founded upon some consideration which passes from the optionee to the optionor. Therefore, unless an option is supported by a consideration, it is for practical purposes of no greater efficacy than a continuing offer.¹ Frequently the consideration is a promise on the part of the optionee to do something. In that case it is advisable that the option should show the fact. Frequently the consideration is a mere nominal sum of money. If that is the only consideration the money should be actually paid to the optionor. Otherwise the option will not be binding. Forms of option follow, a number of which are taken by permission from the latest work on the subject, "James on Option Contracts."

¹ *La Rue v. Groezinger*, 84 Cal. 281, 24 Pac. 42, 18 A. S. R. 179.

§ 37. Option to Purchase Stock on Deferred Payments.

Boston, Mass., January 18, 1926.

In consideration of the sum of five dollars this day paid to me by Fannie Burns, I grant to her the sole and exclusive option to purchase from ten shares of the capital stock of The American Chiclé Company at the price of one hundred dollars per share, payable ten per cent upon the exercise of the option and the balance in nine equal monthly installments commencing one month after the exercise of this option. All deferred payments to bear interest at the rate of six per cent per annum and said stock to remain in my possession till the final payment is made. This option is good for ten days.

H. PRATT.

§ 38. Option or "Refusal" on Capital Stock at a Price as Low as Any Other Bona Fide Offer.

Salt Lake City, Utah, Oct. 5, 1926.

This agreement, made and entered into between Horace H. Cummings and Barbara M. Cummings, his wife, first parties, and Christian Nielson and Sarah E. Nielson, his wife, second parties, all of Salt Lake City, Salt Lake County, Utah, witnesseth: That the said second parties hereby sell and convey to the first parties all their right, title and interest in the Cummings-Nielson Co., represented by 14 shares of the capital stock (one share of their original investment having been sold to James Nielson) and also to give an option on all their or either of their interest in the estate of Julian Moses, deceased, or refusal to purchase the same at a price as low as any other bona fide offer for it or any portion of it, for the sum of five hundred eighty dollars (\$580.00) cash, the receipt of which is hereby acknowledged and four hundred thirty dollars (\$430.00) within six months from date thereof. The said second party shall also see that the ten shares of stock which are now held as security for certain payments to be made to Ruth Moses shall be liberated before the said second payment is made. In consideration of the transfer of stock and the fulfilling of the aforesaid covenants and conditions, the first parties agree to make the payments as aforesaid.²

(Signature of Parties.)

§ 39. Option to Seller to Repurchase.

In consideration of the sale to me this day of 257 shares of the capital stock of the Seaboard Underwriters I hereby agree not to re-sell the same at any time until I shall have first given to John M. Wright ten days' refusal of the same at the price and on the terms for which I may at the time be willing to sell the same.

.....

² Cummings v. Nielson, 42 Utah 157, 129 Pac. 619.—James on Option Contracts.

§ 40. Clauses of Agreement by Vendor to Repurchase Shares at Option of Purchaser at Purchase Price and Interest Thereon, and Notice of Election Thereunder.

The party of the second part hereby agrees to purchase thirty (30) shares of stock bearing par value of \$3000.00 and to pay two thousand two hundred and fifty dollars (\$2250.00) on or before January 1, 1926, upon the proper delivery of the stock certificates, the company having been legally organized according to the laws of the State of Utah, and being ready for business.

The parties of the first part, in consideration of the covenants and agreements of the party of the second part, hereby agree to guarantee said stock in this manner, namely, that they, the said parties of the first part, agree to purchase said thirty (30) shares of stock of the party of the second part four years after the date of the issue of said stock for the sum of two thousand two hundred and fifty dollars (\$2250.00), with interest thereon at eight per cent (8 per cent) per annum from the time of issue, at the option of the party of the second part.

Notice to Purchase.

Gentlemen: It is my desire that you purchase, on the 23rd day of January, 1926, thirty (30) shares of stock of the Greenriver Fruit & Land Company for the sum of \$2250.00, with interest, for four years at eight per cent per annum, amounting to \$720.00 according to the terms of a certain contract dated the 11th day of September, 1925, between J. Moncrief, W. A. Cook, and D. D. Potter, of the first part, and A. M. Echternach, of the second part. By the terms of this contract you have agreed to purchase this stock four years after its issue if I desire to sell.

A. M. Echternach.³

§ 41. Option to Purchaser to Return Stock and Receive Back Price Paid.

I have this day sold to Mrs. Enid Turner one hundred shares of the Capital stock of the Western Stamp Bureau, Incorporated. If she is dissatisfied with the purchase and will return the same to me within thirty days, I agree to pay to her the amount this day paid to me.

Dated this day of, 1926.

MATILDA ERICKSON.

§ 42. Option Clause to Majority of Stockholders to Appraise and Purchase Shares of Stockholders Becoming Undesirable Associates, etc.

If in the opinion of the holders of the majority of the common stock of said corporation a holder of any common stock of said corporation should

³ Echternach v. Moncrief, 94 Kan. 754, 147 Pac. 860.—James on Option Contracts.

cease to be a desirable associate either on account of incompetency or personal conduct or if a holder of any common stock of said corporation shall voluntarily resign from his or her position, the holders of the majority of said common stock shall be at liberty and they are hereby empowered to appraise the cash value of said stock and redeem or purchase the same from said party, and said stock so purchased shall be divided or distributed among the holders of said common stock in proportion to the amounts of stock held by each.⁴

§ 43. Option by Stockholders to Sell Their Shares and Interest in Business of Corporation to a Promoter of a Consolidation.

This Agreement, Entered into this day of A. D. 19...., by and between the undersigned owners and holders of property, or shares of capital stock or interest in Brick Company, hereinafter called the "Vendors," parties of the first part, and hereinafter called the "Consolidation Purchaser," party of the second part, WITNESSETH:

WHEREAS, The "Consolidation Purchaser" desires to obtain the right to purchase and acquire for, or to have purchased and acquired by, a corporation hereinafter to be designated by him and hereinafter known as "Brick Company," the property hereinafter described, and

WHEREAS, The "Vendors" are the owners of, and are willing to sell to the "Consolidation Purchaser," the property hereinafter described,

NOW, THEREFORE, In consideration of the work and services performed in the promotion of a consolidation of the fire brick manufacturers of the State of Pennsylvania by the said "Consolidation Purchaser," and in further consideration of the action to be taken by the "Consolidation Purchaser," herein, and of one thousand dollars (\$1000) to the "Vendors" by him paid (the receipt of which is acknowledged), the "Vendors" hereby covenant and agree with the "Consolidation Purchaser" as follows:

Article I: The "Vendors" if, and when, so requested by the "Consolidation Purchaser," at any time before, 19.., will sell, convey, assign, transfer, and deliver unto the "Consolidation Purchaser," his heirs, executors, administrators, survivors or assigns, by good and indefeasible title, and free and clear of all incumbrances and all indebtedness and liabilities (except such as are specifically stated in "Schedule A," hereto annexed and made a part hereof), all their, and each of their property, shares of capital stock of, and interest in said Brick Company to the extent set opposite their respective signatures, and upon and subject to the terms hereinafter provided: A general but not exclusive schedule of the assets and property of the Brick Company being hereto annexed and made a part hereof, marked "Schedule B."

Article II: The purchase price of the property acquired by Article I

⁴ Boggs v. Boggs & Buhl, 217 Pa. 10, 66 Atl. 105. See, also, Boswell v. Buhl, 213 Pa. 450, 63 Atl. 56.—James on Option Contracts.

shall be three hundred thousand dollars (\$300,000), and the one thousand dollars (\$1000) paid as part consideration for this contract shall be applied on account thereof.

Article III: If, and in case, the "Consolidation Purchaser" shall elect to purchase said property, property interests and shares of capital stock, payment at the price aforesaid shall be made wholly in cash, or at the option of the "Vendors" one hundred and fifty thousand dollars (\$150,000) in cash, and the remainder thereof in the preferred and common stocks of the "Brick Company" under the terms and conditions set forth in the exhibit hereto annexed and made a part hereof as "Vendors' Underwriting Proposition."

Article IV: The "Vendors" will allow the appraisers, accountants, attorneys, and agents of the "Consolidation Purchaser" full access to, and examination of, all the property, books, inventories, records, titles, corporate status, and affairs of their said business covering a period not exceeding three years last past, and will likewise make and submit forthwith to such appraisers and accountants full and true inventories, balance sheets, profit and loss income statements, and other financial or manufacturing statements of any kind, and upon demand will furnish maps, complete abstracts of title, and other data which said appraisers, accountants and attorneys may deem necessary.

Article V: In consideration of the execution of this agreement by the "Consolidation Purchaser," and by the "Vendors" severally, and in the event of the purchase of, and payment for, said property upon the terms of this agreement, and in further consideration of such purchase and payment, the "Vendors" severally and expressly covenant and agree with the "Consolidation Purchaser," his heirs, executors, administrators, survivors, or assigns that they will not, directly or indirectly, individually or as officers, directors or agents of any corporation, firm or individual, engage or be interested in the business of manufacturing, buying, selling or dealing in silica or clay fire brick in the States of or for a period of fifteen years from and after the date of such purchase and payment, except with the consent, or in the employment of the said "Brick Company" or the parties to whom this contract may be assigned by the "Consolidation Purchaser," it being understood and agreed that the "Vendors'" good will is one of the essential considerations for the execution of this contract by the "Consolidation Purchaser." They are, however, in no way restricted in the manufacture of Magnesite brick or dealing in magnesite, or any article made in whole or in part from magnesite.

Article VI: The "Consolidation Purchaser" shall have, and hereby there is vested in him, the right to assign, transfer, and set over to such banker or bankers, or other party as shall be nominated by such "Consolidation Purchaser," any or all of his rights under and in this agreement, and thereupon such assignee (provided that such assignment be by written instrument accepted by such assignee, and not otherwise) shall be sub-

rogated to, and shall have all the rights and interests, and shall assume all the liabilities, which are vested in or attached to the said "Consolidation Purchaser" and which may be so assigned, and upon such accepted assignment the "Consolidation Purchaser," ipso facto shall be fully released and discharged from all liability, obligations, or responsibility, if any there be, under this agreement.

Article VII: "The Consolidation Purchaser" will cause to be made promptly an audit, examination and appraisal of the property covered by this contract, and will thereafter, and on or before the day of, 19.., give notice in writing to the "Vendors" by a communication addressed the Brick Company, at, of his election to avail of this option, and such notice shall be accompanied by a statement showing the proposed total issue of bonds and preferred and common stock of the "Brick Company," and also the aggregate net earnings for the past two years of the concerns being purchased by it.

No mistake, error or variation from the final figures, in such statement of securities to be issued, or aggregate net earnings, however, shall avoid the right of the "Consolidation Purchaser" to purchase the property of the "Vendors" for cash at the purchase price herein.

Article VIII: The "Vendors" will within ten days after the receipt of the notice and statement mentioned in Article VII (during which period they shall have the right to investigate the accuracy of the figures in said statement) notify the "Consolidation Purchaser" of their intention to exercise the option given them by Article III to take the remainder of their purchase price in stock according to the terms thereof and the exhibit thereto, and thenceforth they will be bound thereby.

Article IX: The "Vendors" certify that "Schedule C," hereto annexed and made a part hereof, correctly states for the periods therein set forth:

- 1st. The amount of goods sold by them.
- 2nd. The gross earnings.
- 3rd. The net earnings.
- 4th. The amount of interest paid for borrowed money.
- 5th. The amount paid for salaries of President, Vice President, Secretary, Treasurer and General Manager.

Article X: To facilitate purchase and payment hereunder the "Vendors" when called upon so to do by the "Consolidation Purchaser" will deposit with the Trust Company of,, the certificates for the shares so owned or controlled by them respectively, duly assigned in blank, and their proper conveyances of, and abstracts of title respecting the property covered by this agreement, and will cause said certificates or other property to be delivered by said Trust Company to the said "Consolidation Purchaser," his heirs, executors, administrators, survivors, or assigns, upon payment being made therefor as herein provided. In the event that this agreement be not so consummated, then and thereupon such certificates, conveyances, abstracts, and other property shall be returned to the "Vendors" respectively so depositing the same, without

expense of any kind. In evidence of such deposits hereunder, the Trust Company shall issue and deliver to the "Vendors" its proper receipt. All payments and deliveries provided for by this agreement shall be made at the office of said Trust Company, and the "Vendors" agree that, during the period covered by this contract, no increase in its capital stock, and no bond, mortgage, lease or conveyance upon or in respect of its real estate or plant, or any of its property, shall be made, and that allowances shall be made to the "Consolidation Purchaser" for any dividends paid, or any distribution of surplus profits or earnings after the date hereof.

Article XI: At the time of transfer hereunder, upon request, the "Vendors" will procure for the "Consolidation Purchaser," or his assigns, the resignation in writing of all its directors and officers.

Article XII: The parties hereto severally and respectively will make, execute, acknowledge and deliver in due form of law, all such conveyances or other instruments, and will do all such acts and things as reasonably may be required, the one from the other, to fully carry out the purposes of this agreement.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first above written.

(Signed) Brick Company,

By.....
President.

Attest:
.....
Secretary.

NAME	No. of Shares.
.....
.....

(Schedules should be attached.)

Vendors' Underwriting Proposition.

The "Consolidation Purchaser" will endeavor to observe like rules of valuation in purchase of all properties.

For the aggregate purchase price of all the concerns as set forth in Article II in each "Vendor's Agreement," the "Brick Company" will issue, or cause to be issued, under its guaranty five per cent bonds (first mortgage, debenture, or collateral trust, and in one or several series, at its option) in an amount not to exceed thirty-three and one-third (33⅓) per cent of such aggregate purchase price and six (6) per cent cumulative preferred stock for the remainder of such aggregate purchase price.

Each of the "Vendors" taking a part of their purchase price in the preferred common stock of the "Brick Company" under Article III of "Vendor's Agreement" (there called "The remainder") will receive such part or remainder of purchase price in the six (6) per cent cumulative preferred stock of the "Brick Company" at par, and in addition thereto and as a bonus herewith, will be paid fifty (50) per cent thereof in the common stock of the "Brick Company" at par.

The "Vendors" (taking part or the remainder of their purchase price in stock under Article II) will be paid a further amount of common stock (providing their earnings justify it) in the following manner:

The average net earnings of the "Vendors" for the past two years shall be ascertained and the auditor's estimate of earnings upon new plants erected or acquired within these two years, whose earnings would not otherwise receive credit, shall be added thereto.

The ratio that the part or remainder or purchase price (that the "Vendors" take in stock) bears to the total purchase price shall be ascertained and such rate shall be applied to such average net earnings, and there shall be deducted from the result thereof an amount equal to six (6) per cent of the "Vendor's" preferred stock (payable thereon) and common stock shall be paid to the "Vendors" on the remainder of such proportion of said earnings on the basis of what would have been four (4) per cent, except for the issue for good will hereinbefore provided for.⁵

§ 44. Provisions of Articles of Incorporation Giving the Corporation the First Refusal on Shares of Original Subscribers Desiring to Sell.

If at any time any of the original stockholder subscribers hereto desire to sell and dispose of their stock, said stockholder or stockholders shall first offer it in writing to the board of directors, stating price and terms and give the board of directors ten days in which to place it with the stockholders. At the expiration of ten days if no stockholder has purchased and settled for same, said stockholder or stockholders shall have the right to sell to whomever will purchase upon the same (terms) and price for which it was offered to the board of directors.⁶

§ 45. Agreement for Sale and Purchase of Options in Exchange for Bonds of Corporation to Be Organized and on Condition that the Corporation Shall Be Organized.

Augusta, Ga., June 1, 1926.

In consideration of five thousand dollars in cash, represented by draft of W. H. Chew, trustee of G. E. Fisher, of 37 Wall Street, New York, for \$5,000.00, and the agreement of said trustee to have delivered to me fifteen thousand dollars of bonds as hereinafter stated, total consideration twenty thousand dollars, I, Thomas Barrett, Jr., hereby agree to sell to said trustee all options owned by me and expiring May 1st, 1926, for the purchase of land fronting on the Savannah River, which stand in my name, and which

⁵ Harbison-Walker Refractories Co. v. Stanton, 227 Pa. 55, 75 Atl. 988.—James on Option Contracts.

⁶ Held valid in Casper v. Kalt-Zimmers Mfg. Co., 159 Wis. 517, 149 N. W. 754, 150 N. W. 1101.—James on Option Contracts.

are of record in Edgefield County, S. C., and Lincoln County, Ga., to which reference is made.

This sale is upon the condition that said trustee and said G. E. Fisher and his associates, shall proceed to organize an incorporation to develop a water power of not less than 15,000 horse-power, at or near Ring Jaw Shoals, on the Savannah River, within the space of eight (8) months from this date, and, upon the completion of said incorporation deliver to me first mortgage bonds of the corporation for fifteen thousand dollars (\$15,000); said corporation not to issue bonds in excess of 80 per cent of the amount paid, laid out and expended in the purchase of the various tracts of land and the land covered by these options, and in the development of said water power, or that said trustee and said G. E. Fisher and his associates shall have the privilege of paying to me \$15,000.00 in cash instead of bonds.

It is distinctly understood that if said draft for five thousand dollars is not paid on presentation, then this instrument is absolutely null and void, and, that if said money is paid and the corporation is not organized and the bonds herein before specified issued and delivered to me by January 1st, 1926, or fifteen thousand dollars cash paid in lieu thereof, time being of the essence of the contract, then this sale shall be null and void, and the sum of five thousand dollars paid to me at this time shall not be accounted for by me, but shall be retained by me as an amount of liquidated damages agreed upon between the parties hereto for a violation of the said contract, and all options to be returned to me the same as if this sale had not been made.⁷

W. H. CHEW, Trustee.

THOMAS BARRETT, JR.

§ 46. Agreement to Give Option on Capital Stock to Syndicate Which Agrees to Do Exploration Work on Mines.

THIS AGREEMENT, made the 17th day of March, 1926, between the Merchants' & Miners' National Bank, of Philipsburg, Montana, Joseph H. Harper and Joseph Harper, assignee of Durfee & Sherman; M. L. MacDonald, Robert McArthur, David Sterrit, and Mrs. F. W. Sherman, of Butte, Montana, the parties of the first part, and Henry Williams, William Thompson, James Hamilton, W. R. Kenyon, Joseph H. Harper, and F. W. Sherman, of Butte, Montana, the parties of the second part witnesseth:

That the said parties of the first part for and in consideration of the various payments to be made hereinafter specified as well as of the mutual covenants and conditions herein contained, agree to sell and convey unto the said parties of the second part, their heirs and assigns, three hundred thousand (300,000) shares of the capital stock of the Sunrise Mining & Milling Co., held by the said parties of the first part in the following proportions, to wit:

⁷ *Twin City Co. v. Barrett*, 126 Fed. 302, 61 C. C. A. 288.—James on Option Contracts.

The said Merchants' & Miners' National Bank holds one hundred and twenty-seven thousand and twenty-nine and $\frac{2}{3}$ (127,029 $\frac{2}{3}$) shares as collateral security for indebtedness of said Durfee & Sherman. The said Joseph H. Harper holds twenty-five thousand (25,000) shares in his own right and one hundred and thirty-eight thousand three hundred and seventy-one (138,371) shares as assignee of said Durfee & Sherman. M. L. MacDonald holds three thousand (3000) shares, Robert McArthur, one thousand five hundred (1500) shares, David Sterrit, three thousand (3000) shares, and Mrs. F. W. Sherman, two thousand one hundred (2100) shares.

The said stock is to be deposited in escrow in the Merchants' & Miners' National Bank of Phillipsburg, immediately upon the execution of this agreement.

The said second parties are to work and explore the mines of the said Sunrise Mining & Milling Co., situated at Sunrise, in Granite County, during a period of four (4) months, which said work must be begun on or before the first day of April, 1926, and must be prosecuted with diligence. The said second parties shall employ in said work at least five (5) men continuously, but the said work shall be deemed continuous within the meaning of this agreement if the said second parties shall employ the said five (5) men or more during the twenty-five (25) days of each and every month from the time of their commencing work under this agreement. The said second parties shall, on or before the 11th day of July, 1926, pay, or cause to be paid into the said Merchants' & Miners' National Bank the sum of two thousand and eighty-three and $\frac{76}{100}$ dollars (\$2083.76) which sum shall be applied in payment of the interest due said bank upon the indebtedness of the said Durfee & Sherman, and on the same day shall pay, or cause to be paid to the said Joseph H. Harper for himself, and as trustee for said M. L. MacDonald, Robert McArthur, David Sterrit, and Mrs. F. W. Sherman, the further sum of three hundred and thirty-four and $\frac{73}{100}$ dollars (\$334.73). The said parties of the second part shall on or before November 11, 1926, pay or cause to be paid into the said Merchants' & Miners' National Bank to the credit of said Joseph H. Harper, assignee of said Durfee & Sherman, the further sum of nineteen thousand three hundred forty-one and $\frac{31}{100}$ dollars (\$19,341.31), and shall also pay or cause to be paid to the said Joseph H. Harper for himself, and as trustee for said M. L. MacDonald, Robert McArthur, David Sterrit, and Mrs. F. W. Sherman, the further sum of two thousand seven hundred forty-five and $\frac{95}{100}$ dollars (\$2,745.95).

But if the said parties of the second part shall fail to work the said mine of the said Sunrise Mining & Milling Company as hereinbefore provided, or shall fail to make any of the payments herein provided for on or before the time when the same shall become due, then the parties of the first part may, at their option, declare this contract void, time being the

essence of this agreement to convey, and shall thereupon be entitled to the immediate possession of said stock.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands the day and year in this instrument first above written.⁸

(Signature of all parties.)

§ 47. Option Agreement for Property to Be Taken Over by Proposed Corporation.

WHEREAS, of the Borough of, Pa., is the sole owner of land situate in the Third Ward of the Borough of, County of and State of Pennsylvania, bounded and described as follows:

AND WHEREAS, of the City of Philadelphia, is engaged in consolidating the Flour Mill and others, and has offered to purchase the mill, etc. of the said (described property) for the sum of twenty-five thousand dollars payable as hereinafter more particularly set forth, and the sum is a satisfactory consideration.

Therefore, I the undersigned, in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, do hereby agree to prepare a deed for the property above described transferring the same to, his heirs or assigns, or to a corporation to be designated by him, and accept in payment thereof the sum of six thousand two hundred and fifty dollars in cash, and eighteen thousand seven hundred and fifty dollars in six per cent preferred stock of the Company or such other company as may be organized by said to acquire said property, and in addition the sum of eighteen thousand seven hundred and fifty dollars of the common stock of said Company.

In addition to the eighteen thousand seven hundred and fifty dollars of preferred and also of common stock as hereinbefore set forth, there is to be issued the sum of six thousand two hundred and fifty dollars in six per cent preferred stock and a like sum in common stock, which is to be transferred to the said for the six thousand two hundred and fifty dollars in cash as hereinbefore set forth.

The deed to the property to be deposited in escrow with the Trust Company of Philadelphia, Pa., on or before the 15th day of March, 19.., and upon delivery by the said of the considerations named above the said deed shall be recorded in the office of the Recorder of Deeds at Pa., and become the property of the said or Company.

It is also agreed that this option shall become void in case the Flour Mill and others now contemplated do not go into consolidation.

It is also agreed that the preferred stock issued by the said Milling and Export Company shall be limited to such an amount as may

⁸ Godfrey v. McConnell, 151 Fed. 783.—James on Option Contracts.

be necessary to purchase milling property, and no preferred stock shall be issued for profit to any attorney, underwriter, promoter, or Trust Company.

It is hereby further agreed that said or said Trust Company shall pay to the vendor cash for the stock of grain, flour or feed on hand at the time of transfer at cost value, and in case the vendor and vendee can not agree upon a price then the vendor is to have the privilege of disposing of said grain, flour or feed to any one.

In case the said fails to comply with the terms and conditions of this contract on or before, 19.., the said Trust Company is hereby authorized to return said deed to the vendor and this contract shall be of no further force or effect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of, A. D. 1926.⁹

..... (Seal)

WITNESS:

.....

⁹ Gochnauer v. Union Trust Co., 225 Pa. 503, 74 Atl. 371.—James on Option Contracts.

CHAPTER VI.

PROSPECTUSES.

§ 48. Prospectuses.

§ 49. Prospectuses Under the English Law.

§ 50. How Not to Draw a Prospectus.

§ 51. How to Draw a Prospectus.

§ 48. **Prospectuses.**—Few things pertaining to corporate business, excepting, of course, the judicial settlement of knotty legal questions, require more skill and ability than the preparation of a prospectus. The literary productions of this class are as numerous and varied in matter, quantity, and quality as are corporate schemes, mental endowments, subjects for exploitation and development. The only proper office of a prospectus is to present inducement to the public, or to a class, to invest in the shares of a corporation already formed or whose formation is contemplated. Prospectuses take their form, and their contents are controlled to a great extent, by the stage at which they are promulgated. A promoter will sometimes set forth his scheme in print before any articles of incorporation are filed or any step is taken to organize. This method is preferable where he has no intention or desire to hold a controlling interest, and expects to make his profits at the inception, allowing the incorporators to conduct the enterprise or develop the property with future profits in view. When this method is adopted, the promoter is usually the owner of, or has an option on, that which is to constitute the basic property of the corporation in contemplation, and his main purpose is to make an advantageous sale of the property. The creation of a corporation is merely the means to an end. Or, the promoter, or promoters, may undertake the creation and floating of the corporate enterprise with a reservation of a substantial interest in stock, in return for their property, desiring no cash payment. Such is the usual plan where they are confident that the enterprise will prove to be extremely profitable, and that a minority interest will, if the scheme is prudently and honestly conducted, alone bring large returns. But, under either of the conditions above authorized, the same end may be reached by first forming and completing the organization.

No statement should be contained in a prospectus which the promoters are not able to prove as a fact, if required. This does not apply to estimates of future earnings and the like. Matters purely of prophecy of course cannot be certain. But if the predictions are based upon misrepresentations of past experience, or upon past events or existing matters stated as facts which are untrue, they may defeat the right to recover the subscription or may enable the subscriber to compel its return to him. The higher the grade of the proposed enterprise and the more experienced the investing public to which the appeal is directed, the more temperate and conservative will be found to be the tone of the prospectus. A great many of the prospectuses that are circulated embody a proposition to sell treasury stock, that being a convenient and plausible method of raising cash capital with which to develop property, or otherwise carry out the purposes of the incorporators. Preliminary to the issuance of such a prospectus there must, of course, be treasury stock provided. To do this there must have been previously a regular issue of the stock or property and then a donation of the stock to the corporation, or it must have been forfeited to the corporation for non-payment of assessments.

§ 49. Prospectuses Under the English Law.—In England the contents of prospectuses are regulated by the provisions of the Companies Act of 1908. Great importance is attached to the contents of the prospectus and the requirements are interesting as showing what the English law regards as the essential information to be furnished to a prospective subscriber for shares. These matters include: (a) the contents of the memorandum of association, with the names, addresses and descriptions of the signatories, and the number of shares subscribed by them respectively; and the number of founders, or management or deferred shares if any, and the nature and extent of the interest of the holders in the property and profits of the company; (b) the number of shares (if any) fixed by the articles of association, as the qualification of director, and any provision in the articles as to the remuneration of directors; (c) the names, descriptions and addresses of the directors or proposed directors; (d) the minimum subscription on which the directors may proceed to the allotment,

and the amount payable on application and allotment on each share; and in case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted; and the amount, if any, paid on the shares so allotted; (e) the number and amount of shares and debentures issued, or agreed to be issued as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; (f) the names and addresses of the vendors of any property purchased or acquired by the company or proposed to be so purchased or acquired which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor and where there is more than one vendor or the company is a sub-purchaser, the amount so payable to each vendor; provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; (g) the amount (if any) paid or payable as purchase money in cash, shares or debentures for any such property as aforesaid, specifying the amount (if any) payable for good will; (h) the amount (if any) paid within the two preceding years, or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for or any shares in or debentures of the company, or the rate of any such commission; provided, that it shall not be necessary to state the commission payable to sub-underwriters; (i) the amount or estimated amount of preliminary expenses; (j) the amount paid within the two preceding years or intended to be paid to any promoter and the consideration for any such payment; (k) the dates of and parties to every material contract and a reasonable time and place at which any material contract and a copy thereof may be inspected; provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; (l) the names and addresses (if any) of the

auditors of the company; (m) full particulars of the nature and extent of the interest (if any) of any director in the promotion of or in the property proposed to be acquired by the company or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise, by any person either to induce him to become or to qualify him as a director or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and (n) where the company is a company having shares of more than one class the right of voting at meetings of the company conferred by the several classes of shares respectively.

§ 50. How Not to Draw a Prospectus.—The following is an example of a prospectus so drawn as to invite trouble. The reader will note all through it the definite and positive character of the statements concerning matters which in the nature of things must be more or less conjectured:

Prospectus of the Eureka Western Mining Company.

ORGANIZATION AND CAPITALIZATION.

The Eureka Western Mining Company is a corporation, existing under the laws of the State of Nevada, with a capitalization of one million shares of par value of one dollar (\$1.00) each share. Of this capitalization shares are in the treasury of the Company available to finance the development and operation of the property.

PROPERTIES, LOCATION AND TITLE.

The properties of the Eureka Western Mining Company are located in the Eureka Mining District, one of the most famous fields for gold production in the State of California. The Company owns the Pat Quartz Mine and the Johnnie Quartz Mine, and holds, under the option to purchase the Pioneer Mine, United States Patent, eleven (11) acres; the Morse Tract, United States Patent, twenty (20) acres; and the Rose Tract, United States Patent, sixty (60) acres. The terms of the options for purchase of the last named properties are so lenient that all of these claims can be paid for out of the returns from one extracted from this ground. None of these option contracts call for final payment under four (4) years from June, 1926.

This group of gold properties is the north extensions of the famous Gold Cliff Mine, belonging to the Utica Mining Company. The Gold Cliff Mine has been in continuous operation for at least thirty (30) years. Its vein has been opened up to a depth of four thousand (4000) feet below the

croppings. The best known mine operators, without hesitation declare that the Gold Cliff Mine, and the properties of the Eureka Western Mining Company lie on the main ore belt of the Mother Lode.

A BRIEF HISTORY OF THE PROPERTY.

The Pioneer Mine and the adjoining ground were in early days worked for gold, and were prospected by old-timers down to the water level. From authentic records, we find that the Pioneer Mine produced in those days at least fifty thousand dollars (\$50,000.00) in gold bullion. Its entire surface is still pitted with prospectors' holes, the best proof that it gave up quantities of pay dirt. Until the formation of the Eureka Western Mining Company, no attempt has been made to reach the deeper levels of this mine. This Company has, up to this date, expended about fifteen thousand dollars (\$15,000.00) in a hoist and a compressor installation, and in the sinking of the shaft from near the surface to the one hundred and thirty (130) foot level. The operations of the Company have proven the existence of a chute of pay ore below the water level. It is only necessary now to develop the mine to greater depths and to provide proper equipment for the extraction and reduction of the ores to make of this concern a strong dividend paying institution.

THE EUREKA MINING DISTRICT.

Within this district are some of the best known gold mines in the United States. For instance, the Utica Mine, which has been in continuous operation for more than forty (40) years, has produced twenty-two million dollars (\$22,000,000.00) above its twelve hundred (1200) foot level. Lately it has been explored to the twenty-nine hundred (2900) foot level, and from present indications, it seems certain that a second great Utica is now being uncovered, beginning with the twenty-nine hundred (2900) foot level. There seems no doubt but that this famous mine will more than equal its former production and will continue in its successful operation for another period of thirty (30) years at least. The Lightner Mine, adjoining the Utica, has to its credit a production of over six million dollars (\$6,000,000.00) from a little strip of ground only four hundred and eighty (480) feet in length. The Eureka Mine, adjoining the Lightner on the north, has paid in dividends three or four million dollars, and is still today only in its infancy. The biggest nugget ever found, in California, worth forty thousand dollars (\$40,000.00), was taken out of Mother Lode ground, about five miles south from the Pioneer Mine. Within a radius of five or six miles of our property millions upon millions of gold have been taken from or near the surface. You can imagine the fabulous wealth that still remains hidden in this section of the earth.

MOTHER LODE OF CALIFORNIA.

The properties of the Eureka Western Mining Company, as we have said above, are located on the main ore channel of the Mother Lode of California, and are known to contain chutes of payable ore. To those who are well posted in the mining business this means almost a sure success

for our enterprise. Mine workings on the Mother Lode have now reached a depth of almost a mile below the surface. The history of all of these big producing deep mines proves that the payable ore bodies on the Mother Lode are absolutely unfailing with depth. That is to say, that the ore bodies are continuous, without exception, in going downwards. The value of the ore will rise and fall, but not in a single instance have all of these values disappeared never to come again. Not one single well-established ore body on the Mother Lode has yet "petered out," at a depth of a mile below the surface. So you can see that mining on the Mother Lode of California is an industrial proposition. Of course, you must have the "ear marks" to start with. That is to say, you must have evidences of a body of payable ore, but when you have once established this fact, then the business is a certain success. In these respects, the Mother Lode differs from all other mining districts in the world, with exception of the South African Rand.

FACILITIES FOR CHEAP OPERATION.

The property of the Eureka Western Mining Company is located about one mile from the terminus of the Sierra Railway. Several electric power lines cross within a few hundred yards of the mine. Electric power can be had at a price of about four dollars (\$4.00) per H. P. per month. The climate is ideal. Out of door work can be carried on the year round. The greatest forests in the world lie within fifteen (15) miles of Eureka, so that timbers are plentiful and cheap. A water ditch crosses the mine, which will supply water for milling and other purposes. The labor situation is quite good, and wages quite reasonable. Within a mile of the mine there is located one of the best equipped machine shops and foundries in the State of California. Not only can new machinery be bought here, but extra parts for same can be obtained without expensive delays.

PRESENT DEVELOPMENT AND EQUIPMENT.

The present main shaft of the Eureka Western Mining Company is about one hundred and thirty (130) feet deep. Sufficient cross cuts and drifts have been run to thoroughly establish the existence of a payable ore body. This shaft is well timbered, and is well situated to become the permanent working shaft on the property.

The surface equipment consists of a steam boiler, a steam hoisting engine, and a steam compressor, with capacity for about two drills. This equipment is all properly housed. The shaft, of course, is provided with a good substantial head frame. A complete blacksmith shop has been erected not far from the collar of the shaft. Besides, there are on the ground a superintendent's house and several other buildings that can be used for housing the miners. This present equipment is sufficient only for preliminary work in the development of the mine.

PROPOSED NEW DEVELOPMENTS AND PLANT.

This Company proposes to sink the present shaft to a total depth of five hundred (500) feet to one thousand (1000) feet, so as to develop the

ore bodies that have been found, and to open them up properly for cheap extraction and reduction.

Arrangements have been made for a supply of electric power for the operation of the entire new plant. Just as soon as the wires are connected the use of steam will be discontinued.

The new plant will consist of an electric hoist, capable of driving down the shaft to an ultimate depth of fifteen hundred (1500) feet. The new head frame will be designed so as not only to handle the waste product that comes from the mine but also to take care of the pay ore on its way to the mill. An up-to-date electrically driven air compressor will be installed to operate the latest types of drifting, sinking, and stopping air hammer drills. If it becomes necessary to provide means other than the water skips, for taking care of the mine drainage, then electric pumps will be installed underground.

Just as soon as the development work underground will warrant it, a milling plant of at least one hundred (100) tons daily capacity will be erected just west of the shaft headframe. This plant will include the most improved machinery for the reduction of the ores, and the recovery of gold values. Exhaustive tests will be made upon the ores to determine the character of this milling plant, but it is quite certain that fine grinding followed by oil flotation, will be adopted. In such case, the tailings loss should be not more than 20c per ton of ore. The milling plant will be very similar to that to be installed by Mr. W. J. Loring, one of the world's biggest mine operators, in his new plant at the Dutch-App Mines on the Mother Lode, twenty miles south from Eureka.

COST OF PRODUCTION.

From all of the tests so far made on the Pioneer ores and from the records obtainable from neighboring properties, we are safe in estimating that our mill heads will average at least four dollars (\$4.00) per ton. With oil flotation, we expect to recover three dollars and eighty cents (\$3.80) of this amount. Our working costs, even in these abnormal times, ought not exceed two dollars (\$2.00) per ton, so that, at the outset, our profits from this first small unit should be one hundred and eighty dollars (\$180.00) per day, or about sixty-five thousand dollars (\$65,000.00) per year. Of course, as fast as the underground development of the mine will warrant, new units will be added to the milling plant. It will be interesting to many people, not familiar with gold mining, to know that while the costs of labor and material have greatly increased, new drilling methods of breaking out ore underground, and the oil flotation method of recovering values have about off-set the increased cost of production. For instance, where the regulation stamp mills would lose from 40c to 75c per ton in their tailings, the new oil flotation mills have reduced this tailing loss to 10c to 20c per ton of ore.

SALE OF STOCK.

For the purpose of carrying out our plans outlined above, and establishing, on the Mother Lode of California, a gold producing industry that

will pay dividends for the next thirty to fifty years to come, we are offering for sale, on a very liberal plan, a limited number of shares of the Eureka Western Mining Company's stock. This is an opportunity that no investor can afford to miss. We regard it as a sure winner for the following reasons:

The property of the Company is located right on the Mother Lode of California, in one of the most famous and productive mining districts in the State. It is surrounded by mines that have to their credit a production of many millions of dollars. Our veins can be traced on the surface, direct continuations north from the famous Gold Cliff Mine. We have uncovered a chute of pay ore that, according to the laws of the Mother Lode ore bodies, will continue down to very great depths. The ore contains good average gold values and the facilities for operation of the mine are so favorable that a good profit is assured from the reduction of the ore. Besides, the operations of the mine will be in the hands of men thoroughly experienced in the mining business.

The fact, that two hundred mine workers and citizens of Eureka have taken stock in the Eureka Western Mining Company, is evidence that our property and our management stand right with our home people.

§ 51. How to Draw a Prospectus.—For the purpose of furnishing a comparison, we take the foregoing prospectus so modified as to avoid the errors of over-statement. It will be noted that the essential facts are set forth substantially as in the preceding, but the language is conservative in tone and what is not positively known to be true is stated to be probable or possible only as the case may be.

The Eureka Western Mining Company

Eureka, California.

ORGANIZATION AND CAPITALIZATION.

The Eureka Western Mining Company is a corporation, existing under the laws of the State of Nevada, with a capitalization of one million shares of par value of one dollar (\$1.00) each share. Of this capitalization 664,496 shares are in the treasury of the Company available to finance the development and operation of the property.

PROPERTIES, LOCATION AND TITLE.

The properties of the Eureka Western Mining Company are located in the Eureka Mining District, one of the most famous fields for gold production in the State of California. The Company owns the Pat Quartz Mine and the Johnnie Quartz Mine, two unpatented mines, and holds, under option to purchase the Pioneer Mine, United States Patent, eleven (11) acres; the Morse Tract, United States Patent, about twenty (20) acres; and the Rose Tract, United States Patent, about sixty (60) acres. The terms of the options for purchase of the last named properties are very

lenient. None of these option contracts call for final payment under four (4) years from June, 1926.

This group of gold properties is one of the northerly extensions of the famous Gold Cliff Mine, belonging to the Utica Mining Company. The Gold Cliff Mine has been in continuous operation for about thirty (30) years. Its vein has been opened up to a depth of two thousand (2000) feet below the croppings. The best known mine operators, without hesitation, declare that the Gold Cliff Mine, and the properties of the Eureka Western Mining Company lie on the main ore belt of the Mother Lode.

A BRIEF HISTORY OF THE PROPERTY.

The Pioneer Mine and the adjoining ground were in early days worked for gold, and were prospected by old-timers down to the water level. It is reported that the Pioneer Mine produced in those days at least fifty thousand dollars (\$50,000.00) in gold bullion. Its entire surface is still pitted with prospectors' holes, the best proof that it gave up quantities of pay dirt. Until the formation of the Eureka Western Mining Company, no attempt has been made to reach the deeper levels of this mine. This Company has, up to this date, expended about fifteen thousand dollars (\$15,000.00) in a hoist and a compressor installation, and in the sinking of the shaft from near the surface to the one hundred and thirty (130) foot level. The operations of the Company have proven the existence of a chute of pay ore below the water level. It is necessary now to develop the mine to greater depths, and if, as it is reasonable to believe, the ore developments become more extensive, the Company must then provide proper equipment for the extraction and reduction of the ores.

THE EUREKA MINING DISTRICT.

Within this district are some of the best known gold mines in the United States. For instance, the Utica Group of Mines, which have been in continuous operation for more than forty (40) years, are credibly reported to have produced twenty million dollars (\$20,000,000.00). It is now being worked at the 2900 foot level, and it is believed that it will be successfully worked for many feet below that depth. The Lightner Mine, adjoining the Utica, has to its credit a production of over six million dollars (\$6,000,000.00) from a little strip of ground only four hundred and eighty (480) feet in length. The Eureka Mine, adjoining the Lightner, on the north, has paid in dividends several million dollars, and is still today only in its infancy. The biggest nugget ever found in California, worth forty thousand dollars (\$40,000.00), was taken out of Mother Lode ground, about five miles south from the Pioneer Mine.

MOTHER LODE OF CALIFORNIA.

The properties of the Eureka Western Mining Company, as we have said above, are located on the main ore channel of the Mother Lode of California, and contain many encouraging and satisfactory indications of chutes of payable ore. To those who are well posted in the mining business this means that with greater development our properties can be

reasonably believed to become a successful Mother Lode Mine. Mine workings on the Mother Lode have now reached a depth of almost a mile below the surface. The history of all of these big producing deep mines proves that the payable ore bodies on the Mother Lode are found to continue in many properties to the lowest depth. That is to say, that the ore bodies are continuous in going downwards. The value of the ore will rise and fall, but it is extremely rare to have all of these values disappear never to come again. Not one single well-established ore body on the Mother Lode has yet "petered out," at a depth of a mile below the surface. So you can see that mining on the Mother Lode of California is an industrial proposition. Of course, you must have the "ear marks" to start with. That is to say, you must have evidence of a body of payable ore, but when you have once established this fact, then the business is a probable success. In these respects, the Mother Lode differs from all other mining districts in the world, with exception of the South African Rand.

FACILITIES FOR CHEAP OPERATION.

The property of the Eureka Western Mining Company is located about one mile from the terminus of the Sierras Railway. Several electric power lines cross within a few hundred yards of the mine. Electric power can be had at a price of about four dollars (\$4.00) per H. P. per month. The climate is ideal. Out of door work can be carried on the year round. The greatest forests in the world lie within twenty (20) miles of Eureka, so that timbers are plentiful and cheap. A water ditch crosses the mine, which will supply water for milling and other purposes. The labor situation is good, and wages quite reasonable. Within a mile of the mine there is located one of the best equipped machine shops and foundries in the State of California. Not only can new machinery be bought here, but extra parts for same can be obtained without expensive delays.

PRESENT DEVELOPMENT AND EQUIPMENT.

The present main shaft of the Eureka Western Mining Company is about one hundred and thirty (130) feet deep. Sufficient cross cuts and drifts have been run to establish the probable existence of a payable ore body. This shaft is well timbered, and is well situated to become the permanent working shaft on the property.

The surface equipment consists of a steam boiler, a steam hoisting engine, and a steam compressor, with capacity for about two drills. This equipment is all properly housed. The shaft, of course, is provided with a good substantial head frame. A complete blacksmith shop has been erected not far from the collar of the shaft. Besides, there are on the ground a superintendent's house and several other buildings than can be used for housing the miners. This present equipment is sufficient only for preliminary work in the development of the mine.

PROPOSED NEW DEVELOPMENTS AND PLANT.

This Company proposed to sink the present shaft to a total depth of five hundred (500) feet and later to one thousand (1000) feet, so as to

develop the ore bodies that have been found, and to open them up properly for cheap extraction and reduction.

Arrangements have been made for a supply of electric power for the operation of the entire new plant. Just as soon as the wires are connected the use of steam will be discontinued.

The new plant will consist of an electric hoist, capable of driving down the shaft to an ultimate depth of fifteen hundred (1500) feet. The new head frame will be designed so as not only to handle the waste product that comes from the mine but also to take care of the pay ore on its way to the mill. An up-to-date electrically driven air compressor will be installed to operate the latest types of drifting, sinking, and stopping air hammer drills. If it becomes necessary to provide means other than the water skips, for taking care of the mine drainage, then electric pumps will be installed underground.

Just as soon as the development work underground will warrant it, a milling plant of at least one hundred (100) tons daily capacity will be erected just west of the shaft headframe. This plant will include the most improved machinery for the reduction of the ores, and the recovery of gold values. Exhaustive tests will be made upon the ores to determine the character of this milling plant, but it is quite certain that fine grinding, followed by oil flotation, will be adopted. In such case, the tailings loss should be not more than 20c per ton of ore. The milling plant will be very similar to that to be installed by Mr. W. J. Loring, one of the world's biggest mine operators, in his new plant at the Dutch-App Mines on the Mother Lode, twenty miles south from Eureka.

COST OF PRODUCTION.

From all of the tests so far made on the Pioneer ores and from the records obtainable from neighboring properties, we believe that we are safe in estimating that our mill heads will average at least four dollars (\$4.00) per ton. With oil flotation, we expect to recover three dollars and eighty cents (\$3.80) of this amount. Our working costs, even in these abnormal times, ought not exceed two dollars (\$2.00) per ton, so that this first small unit should yield a substantial return. Of course, as fast as the underground developments of the mine will warrant, new units will be added to the milling plant. It will be interesting to many people, not familiar with gold mining, to know that while the costs of labor and material during these war times have greatly increased, new drilling methods of breaking out ore underground, and the oil flotation method of recovering values have about off-set the increased cost of production. For instance, where the regulation stamp mills would lose from 40c to 75c per ton in their tailings, the new oil flotation mills have reduced this tailing loss to 10c to 20c per ton of ore.

SALE OF STOCK.

For the purpose of carrying out our plans outlined above, and establishing, on the Mother Lode of California, a gold producing industry that we reasonably believe will pay dividends for many years, we are offering

for sale, on a very liberal plan, a limited number of shares of the Eureka Western Mining Company's stock.

The property of the Company is located right on the Mother Lode of California, in one of the most famous and productive mining districts in the State. It is surrounded by mines that have to their credit a production of many millions of dollars. Our veins can be traced on the surface, direct continuations north from the famous Gold Cliff Mine. We have uncovered a chute of pay ore that, according to the laws of the Mother Lode ore bodies, should continue down to very great depths. The ore contains good average gold values and the facilities for operation of the mine are so favorable that a good profit is assured from the reduction of the ore. Besides, the operations of the mine will be in the hands of men thoroughly experienced in the mining business.

The fact that two hundred mine workers and citizens of Eureka have taken stock in the Eureka Western Mining Company, is evidence that our property and our management stand right with our home people.

CHAPTER VII.

PRELIMINARY SUBSCRIPTIONS.

- § 52. Subscriptions Prior to Incorporation.
- § 53. Subscription Contract Prior to Incorporation.
- § 54. Preliminary Subscription Agreement to Railroad Company, With Voting Trust.
- § 55. Conditional Subscriptions.
- § 56. Fictitious Subscriptions.
- § 57. Unilateral Subscriptions.
- § 58. Preliminary Subscriptions, With Conditions and Stipulations.
- § 59. Subscription Agreement for Preferred Stock.

§ 52. Subscriptions Prior to Incorporation.—In order to insure sufficient capital before incorporation, especially where the original promoters must interest others, agreements are frequently drawn up covering the nature of the work to be undertaken and the number of shares each is to subscribe for. In some states a certain percentage of stock must be subscribed for in the cases of certain classes of corporations before articles of incorporation may legally be filed. Stock subscriptions may be limited and restricted, as may other contracts. It is not necessary that all should stand upon an equal footing with respect to the terms and conditions of payment, provided that all interested have knowledge of the more favorable terms given to one or more less than the whole, and that the subscription is accepted by the corporation before the rights of creditors have attached. This follows from a consideration of the doctrine that under such circumstances the mutual promises of all of the subscribers unite to form a sufficient consideration for the promise of each.¹

Generally speaking, no particular form is requisite to a valid subscription contract. The signing of a writing with a certain number of shares set opposite the signature, stating that it contemplates the organization of bank, and that it contains the names and residences of the shareholders with the number of shares held by each, has been adjudged to be sufficient. In the absence of specific and express statutory directions as to the form

¹ *Cole v. Ryan*, 52 Barb. (N. Y.) 168; *Twin Creek, etc., Turnpike Road Co. v. Lancaster*, 79 Ky. 552, 3 A. & E. C. C. 58.

of the subscription, it is not essential that it be made on a regular subscription book of the corporation. Where subscription books are opened at different places pursuant to notice under a general law, a subscription upon a paper, not literally a book, was declared to be binding. Where a person subscribes a writing with others for purpose of associating themselves to carry on a particular business, such person will be liable, after the incorporation, for the amount subscribed, although he signed the subscription after its date and subsequent to the act of incorporation.²

The right of subscribers to the capital stock of a proposed corporation to withdraw their subscriptions at any time before the organization of the corporation is completed rests upon the impregnable ground of the legal impossibility of completing a contract between two parties, only one of which is in existence. There can be no meeting of the minds of the parties. There can be no acceptance of the subscriber's proposition to become a stockholder. There can be no mutuality of rights or obligations. There can be no consideration for the subscriber's promise. It is a mere *nudum pactum*—a promise without a promisee, a contractor without a contractee. In fact, every element of a binding contract is wanting. If the subscriber's promise to take and pay for shares remains unrevoked till the organization of the proposed corporation is effected, and his promise has been accepted, then we have all the elements of a valid contract—competent parties; mutuality of duties and obligations; a valid consideration, the promise of one party being a sufficient consideration for the promise of the other; a promisee as well as a promisor; a contractee as well as a contractor. In fact, all the elements of a valid contract are present, and the subscription has become binding upon both of the parties. But, till the corporation has come into existence, all these elements are necessarily wanting, and the subscriber's promise amounts to no more than an offer, which, like all mere offers, may be withdrawn at any time before acceptance. When accepted it becomes binding. Till accepted it remains revocable.³

In agreements of this nature, entered into before the organization is formed, or the agent constituted to receive the amounts

² 7 R. C. L. 225.

³ *Bryant's Pond Steam Mill Co. v. Felt*, 37 Maine 234, 32 Atl. 888, 47 A. S. R. 323, 324, 33 L. R. A. 593.

5—Corp. Management

subscribed, the difficulty is to ascertain the promisee, in whose name alone suit can be brought. The promise of each subscriber "to and with each other," is not a contract capable of being enforced, or intended to operate literally as a contract to be enforced, between each subscriber and all the others collectively as individuals. The undertaking is inchoate and incomplete as a contract until the contemplated organization is effected, or the mutual agent constituted to represent the association of individual rights in accepting and acting upon the propositions offered by the several subscriptions. When thus accepted, the promise may be construed to have legal effect according to its purpose and intent, and the practical necessity of the case; to wit, as a contract with the common representative of the several associates.⁴

Where parties propose to form a corporation, and become shareholders therein, and such parties intend to become such shareholders, without further act upon their part, upon the incorporation of the company, and the agreement remains open and is unrevoked, and the corporation is formed in pursuance of it, and thereafter acts upon it by accepting the same, such agreement is valid and binding as a subscription to the capital stock of such corporation.⁵

§ 53. Subscription Contract Prior to Incorporation. — If there be no urgency, the subscription will be made payable after incorporation to the proper officer or bank, or to such agent as may be, by the subscribers, designated in the subscription papers. In the former supposed case the agreement may read as follows:

Subscription Contract Prior to Incorporation.

We, the undersigned, hereby agree with each other, to cause to be formed by us, a corporation under the name of "Pernau Land and Water Company," for the purpose of procuring water rights on one or more of the rivers or streams running through the counties of and in this State; of purchasing, erecting and constructing dams, reservoirs, canals, aqueducts and other ways in and by which the water so procured from said rivers, or any of the same, can be utilized for general purposes; to secure and impound springs, streams, and other

⁴ Athol Music Hall Co. v. Carey, 116 Mass. 471.

⁵ Marysville Electric Light, etc., Co. v. Johnson, 93 Cal. 538, 29 Pac. 126, 27 A. S. R. 215; Shick v. Citizens' Enterprise Co., 15 Ind. App. 329, 44 N. E. 48, 57 A. S. R. 230; Nulton v. Clayton, 54 Ia. 425, 6 N. W. 685, 37 A. R. 213.

water, in either of said counties, and lead the water so secured to any of such canals and waterways, to supply farmers, miners, cities, towns, and villages with any of the said waters for mining, farming, drinking, irrigation, and other purposes; of negotiating for, buying, selling, letting, improving and cultivating lands and town lots in said State; laying out town lots and colony tracts; and selling and letting such town lots and colony tracts. That the capital stock of said corporation shall be \$1,000,000, divided into ten thousand shares of \$100 per share; and we hereby agree with each other, and one with the other, that we will take the number of shares of the capital stock of said corporation which appears opposite our respective names hereunto subscribed, and will pay twenty per cent of the par value of the said shares so subscribed by us respectively, in five (5) days after the articles of said incorporation shall have been filed in the office of the Secretary of State, and will pay the same to the Treasurer of said corporation, at the First National Bank in the City of in the State of And we hereby constitute said Treasurer the agent for said corporation to collect the amount which becomes due as aforesaid.

We further nominate, constitute and appoint C. T. Webb, J. F. Barber, and Enoch Graham as our agents, and the agents of the corporation so to be formed, to negotiate for the purchase of any one or more water rights, canals, reservoirs, aqueducts or waterways for said corporation, and to draw from said Treasurer any or all moneys that may have been paid to him by us respectively, by virtue hereof, and use said money for paying the same; and any and all contracts which our said agents may make in said matter shall be binding upon said corporation and also upon us. Our said agents are further authorized to employ engineers and other assistants, and have them survey routes for such canals and examine proper locations for dams, and do such other service as may be in their opinion for our best interest and the interest of said corporation, to accomplish the objects and purposes for which the same is to be formed.

Dated March 15, 1926.

Names of Subscribers.	Number of Shares Subscribed.
C. T. Webb.....	200
John Goode	100
J. F. Barber	100
Enoch Graham	100
Robert Simpson	100
James Haycroft	100

§ 54. Preliminary Subscription Agreement to Railroad Company, With Voting Trust.

This agreement, made and entered into this 1st day of May, 1926, by and between the parties whose names are hereunto subscribed, witnesseth that:

Whereas, It is the purpose of the undersigned to construct a continuous line of railroad to extend westerly from the City of, in the State of, or some convenient point near said city by way of the Town of along or near the River, to the City of, all in said State, by a convenient and practicable route, hereafter to be determined upon, to some point on tide water, near the City of, in said State, constituting a continuous line about 175 miles in length.

And Whereas, It is proposed and intended for that purpose to organize, under the laws of the State of, a corporation, to be called the and Railway Company, with a capital stock of five million dollars (\$5,000,000), for the purpose of constructing and operating such railroad, so as to insure for the public benefit the existence and operation of a continuous line of railroad between said point;

And Whereas, The parties hereto, as business men, as shippers and consumers of freight, and as individuals, as citizens of said State, and as property owners, will be directly and indirectly, jointly and severally, benefited by the construction and operation of said railroad;

Now, therefore, This agreement witnesseth: That for the purpose of aiding, promoting and forwarding the construction of said line of railroad, and for and in consideration of the premises, and for the sum of \$1.00 by each of the undersigned to the other in hand paid, the receipt whereof is hereby by each of us acknowledged, the undersigned parties hereto do hereby mutually covenant and agree, and bind themselves unto the other, and each to and with the said proposed corporation, the Railway Company, as follows, to wit:

1. Each of the undersigned hereby subscribes the sum set opposite his name to the capital stock of the said proposed corporation, the Railway Company.

The subscriptions of the undersigned, and each of them, are made, however, upon the express condition precedent that, unless within days from and after the date hereof, there shall be subscribed to the capital stock of the said Company sums of money aggregating in all the amount of thousand dollars (\$.....,) the subscriptions of the undersigned, and each of them, shall be null and void; provided, however, that the Railroad Commission of the State of shall have the power, by vote duly passed and recorded in their minutes, to extend the time within which said amount may be subscribed, but such extension shall not exceed months, and if the said sum shall be subscribed within days, or within the time so extended, then these subscriptions shall be in full force and effect.

2. The undersigned hereby further agree that said proposed corporation may, for the purpose of convenience, be organized by any other persons than the undersigned, or any of them, or by any number less than all of them, and that the Articles of Incorporation of said railroad company need not set forth, in the list of subscribers to its capital stock, all or any

particular one of the names of, or the amounts subscribed by, the undersigned, and this covenant shall be deemed to have been made expressly for the benefit of said proposed corporation and shall be irrevocable; and the subscriptions of the undersigned shall be valid and binding upon the undersigned, and the subscribers shall be liable thereon to the said proposed corporation, the Railway Company, whether the amount subscribed by the undersigned and by whom subscribed be set forth by the Articles of Incorporation of said proposed corporation or not.

3. Each of the parties hereto further covenants and agrees to and with the others, and with the said proposed corporation and each and all of them, that the certificates for the stock in said proposed corporation subscribed for by him may be issued in the names of nine Trustees, who shall be selected as hereinafter provided, and that said Trustees, their survivors or survivor, and successors or successor, shall, for the term of years after the of, 19...., have the exclusive right and power to vote such stock in such manner as the majority of the Trustees shall determine at any and all meetings of the stockholders thereof, and for any and all purposes, and to sign, execute and acknowledge as stockholders any and all documents, papers, written assents, By-Laws, or amendments to By-Laws, contracts, acts or deeds, which in the opinion of a majority of said Trustees, it may be necessary, desirable or expedient to so sign, execute or acknowledge; and the power herein conferred upon the said Trustees by the respective parties hereto is and shall be irrevocable for the said term of years, and shall be deemed to be coupled with an interest in the stock of the respective parties hereto, so held in trust, which interest the said Trustees shall hold for the benefit of all other parties hereto.

And it is further covenanted and agreed that the said nine Trustees shall be elected by the subscribers to the capital stock whose aggregate subscriptions, in order of time of subscription, shall first amount to the said sum of dollars (\$.....); and the said election shall be conducted upon the system of cumulative voting as provided in the statutes of the State of

And it is further covenanted and agreed that in the event of a consolidation of the said proposed corporation with any other corporation, and as often as any consolidation shall be made, it shall be in the discretion of the said Trustees to surrender to such consolidated corporation the certificates of stock held by them as aforesaid, and receive in exchange therefor new certificates in such consolidated corporation or corporations, to be held on the same trusts as those herein expressed.

And it is further understood and agreed that the said Trustees shall cause to be issued Trustee's certificates for stock, which certificates shall respectively set forth the number of shares of stock in the said corporation, held in trust for each subscriber or his successor in interest, and shall also specify that the said stock is held subject to the following irrevocable trusts, to wit:

First.—Said Trustees, their survivors, survivor, successors and successor, shall hold said shares with full power to fill from time to time each and every vacancy in their number upon the joint written nomination of a majority of the surviving Trustees, approved in writing by the holders of a majority of the Trustees' certificates issued hereunder.

Each new Trustee shall, from and after the filing of said nomination, so approved in the office of the said railroad company, be as fully vested with said trust as if he was one of the original Trustees above named.

Second.—Said Trustees above named, their survivors, survivor, successors and successor, shall, as stockholders and owners, vote said shares for all purposes whatsoever, upon every question raised at each and every meeting of said Company, whether annual or special, and at any and all stockholders' elections, as the majority of them shall, in their discretion, from time to time determine, and shall also sign, execute and acknowledge as stockholders any and all documents, consolidation papers, written assents, By-Laws, amendments to By-Laws, contracts, acts or deeds which, in the opinion of a majority of said Trustees, it may be necessary, desirable or expedient to so sign, execute or acknowledge.

Such Trustees' certificates shall further set forth respectively that the shares represented thereby are transferable only upon surrender of such certificates by a conveyance in writing signed by the person to whom the same is issued, or his attorney thereunto lawfully authorized and registered in the Trustees' transfer book therefor kept by the parties designated by the Trustees for that purpose, and that every person accepting any transfer thereof declares by so doing that he received said shares subject to said trust, and that such certificate is not valid until signed by two of said Trustees and registered as aforesaid.

The said certificates shall be transferable by indorsement and registration, as above provided, in the same manner as shares of stock ordinarily are.

Five shares of stock each may be transferred by the Trustees to, and allowed to stand in the names of, the persons selected as Directors of the proposed railroad company to qualify them as such.

And it is further covenanted and agreed that in the event of any consolidation of the said proposed corporation with any other corporation, after such certificates have been issued, and also in the event of any consolidation of such consolidated corporation thereafter with any other corporation, then said Trustees shall have the power at any time, by a majority vote, to call in such issued certificates and surrender the same and receive in exchange certificates similar in form, but representing stock in such new or consolidated corporation.

This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, and all parties hereto, and all parties who shall subscribe their names to this agreement, or to other agreements substantially identical herewith, shall be deemed parties to this agreement, and each and every subscriber hereto affixing his name thereby covenants and agrees to and with such parties

as subscribe their names to agreements identical or substantially identical herewith, with the same force and effect as if the names of such other parties were hereunto subscribed.

It is further understood that no call shall be made until the amount of dollars (\$.....) shall have been subscribed, and subscriptions shall be then payable in installments, extending through six months or more, as the Board of Directors of said proposed corporation may determine.

Names of Subscribers.	Number of Shares Subscribed.
_____	_____
_____	_____
_____	_____

§ 55. Conditional Subscriptions. — While conditional subscriptions to stock of corporations have been declared to be contrary to sound public policy by reason of their tendency to mislead and ensnare creditors, and are not, therefore, to be encouraged,⁶ their validity, nevertheless, under some circumstances has been recognized.⁷ A subscriber may not withdraw his subscription, even though it be conditional, unless unreasonable delay occurs in performing the condition.⁸ The subscription agreement may go somewhat into detail and contain conditions, the non-fulfillment of which will have the effect to release or revoke the subscription. Such subscriptions, whether taken before or after incorporation, may call either for ordinary or for treasury stock. If for the latter, it may be as follows:⁹

Conditional Subscription Agreement.

I hereby subscribe and agree to pay for 10 shares of the capital stock of the La Jolla Electric Line, at the price of \$100 per share, this subscription not to be binding until bona fide subscriptions shall have been secured aggregating 1500 shares and only upon call of the board of directors when said company is organized in accordance with the prospectus this day shown me and identified by my signature.

Dated January 18, 1926.

EDWARD F. STAHL.

⁶ *Morrow v. Nashville Iron, etc., Co.*, 87 Tenn. 262, 10 S. W. 495, 10 A. S. R. 658, 3 L. R. A. 37.

⁷ *Taggart v. Western Maryland R. Co.*, 24 Md. 563, 89 A. D. 760.

⁸ *Cravens v. Eagle Cotton Mills Co.*, 120 Ind. 6, 21 N. E. 981, 16 A. S. R. 298.

⁹ *Martin v. Pensacola, etc., R. Co.*, 8 Fla. 390, 73 A. D. 713; *Brown v. Dibble*, 65 Mich. 520, 32 N. W. 656; *Toledo, etc., R. Co. v. Hinsdale*, 45 Ohio St. 556, 15 N. E. 665.

§ 56. Fictitious Subscriptions.—Fictitious subscriptions, or subscriptions made by persons unable to contribute their proportion of the capital, do not satisfy the requirement that the whole capital of a corporation shall be subscribed before its members can be assessed; but if the required number of subscriptions has been obtained in good faith from persons apparently able to perform their duties as shareholders, it is no defense to an action against a shareholder that some of the subscribers have proved to be insolvent.¹⁰ Whether subscriptions by insolvent or irresponsible persons can be taken into consideration depends upon the circumstances. If they were not made and accepted in good faith, but with knowledge that the subscribers were insolvent and irresponsible, they cannot be counted. But it is otherwise if they were made by persons apparently solvent and able to pay and accepted in good faith, although it may appear that the subscribers were and still are totally insolvent.¹¹ For the purpose of determining whether the capital stock of a corporation has been fully subscribed, so as to render individual subscribers liable on their subscriptions, only unconditional subscriptions, payable in cash, can be counted.¹²

§ 57. Unilateral Subscriptions.—Sometimes the procurement of the desired amount of preliminary subscriptions will be facilitated by using the unilateral form of agreement, which may be as follows:

Unilateral Subscription.

NEW ERA PRINTING COMPANY

To be incorporated under the laws of the State of
....., with a capital stock of
\$100,000, divided into 1,000 shares of \$100 each.

I hereby agree to take and pay for ten shares of the capital stock of the New Era Printing Company at their par value; said payment to be made as follows: Fifty per cent to the Treasurer of said company without demand as soon as an organization is effected and I receive notice of that

¹⁰ Morawetz on Private Corporations, § 141, quoted in *Heiskell v. Morris*, 135 Tenn. 238, 186 S. W. 99, A. C. 1918B 1136.

¹¹ Clark & Marshall on Corporations, p. 1549, quoted in *Heiskell v. Morris*, 135 Tenn. 238, 186 N. W. 99, A. C. 1918B 1136.

¹² *Morgan v. Landstreet*, 109 Md., 558, 72 Alt. 399, 130 A. S. R. 531.

fact; the balance in installments of not more than ten per cent of par value each as called for by the Board of Directors. Unless at least one-half the capital stock of said company is, in good faith, subscribed within sixty days from this date, and said company duly incorporated within ninety days from this date this subscription shall be void without further act on my part, or notice from me.

Dated May 1, 1926.

JOHN BROUGHTON.

The unilateral form is much in use in obtaining subscriptions by mail. For that use the name in the body and the date are in blank, and a dotted line is provided, to indicate the place for signing.

§ 58. Preliminary Subscriptions, With Conditions and Stipulations.—The incorporators, or coadventurers, in a corporate enterprise, may, at its inception, make any arrangement they see fit with respect to the interest each is to have in its stock, as well as the terms upon which the same shall be issued; provided, always, that the consideration to be paid be not obviously inadequate. They may also provide that a preference shall be given to some over others in the distribution of profits, provided the statutes of the state where the corporation is formed authorize the issue of preferred stock and the right to issue it be claimed in the articles or charter. Where it is decided in advance of incorporation to issue preferred stock and subscriptions are to be taken, those for the preferred will essentially differ from those for common. An agreement to subscribe and pay for stock within a number of days from the organization of a corporation means stock of a corporation *de jure*, and not *de facto*, and is not binding until the corporation is lawfully organized so as to be authorized to do business.¹³

§ 59. Subscription Agreement for Preferred Stock.

NEW ERA PRINTING COMPANY.

To be incorporated under the laws of the State of
, with a capital stock of
 \$300,000, divided into 3000 shares of \$100 each, of
 which 1000 shares are to be Preferred Stock.

We, the undersigned, hereby severally agree to take and pay for the

¹³ Wright Bros. v. Merchants' Packet Co., 104 Miss. 507, 61 So. 550, A. C. 1915C 1111.

number of shares of the Preferred Stock of the New Era Printing Company (to be incorporated) set opposite our respective names, at the par value of \$100 per share. Payment of fifty per cent of the said price of said shares to be made to the Treasurer of said corporation immediately after its organization, without demand other than a notice from the Secretary of said corporation, and the remainder upon calls made by the Board of Directors; provided, that not more than ten per cent of the par value of said shares shall be called for in any one month; provided further, that said corporation shall be founded and organized not later than May 1st, 1926, and further also provided, that not less than fifty per cent of the preferred and not less than fifty per cent of the common stock shall be subscribed for by responsible persons prior to said last named date.

And the following is an additional condition, the failure to comply with which shall render this subscription void: The said New Era Printing Company shall provide in its articles of incorporation (or provision shall be made in its charter) for a capital stock of \$300,000, divided into 3,000 shares of the par value of \$100 each, 1,000 of which are to be five per cent cumulative preferred stock; the preferred stock to be redeemable at any time after six years at the option of said company, by paying the par value thereof and the accrued dividends, or may be exchanged, at the pleasure of its holders, at any time before redemption, at its par value, for any interest bearing bonds which may be issued by said corporation.

Dated March 1, 1926.

Names.	Addresses.	Shares.	Amount.
E. L. Casey....	Washington, D. C.....	80	\$8,000
I. R. Schick....	Washington, D. C.....	30	3,000

CHAPTER VIII.

CREATION OF A CORPORATION.

- § 60. The Right to Incorporate.
- § 61. Authority of the State Over Corporations.
- § 62. Methods of Creating Corporations.
- § 63. Extent of Organization Prior to Incorporation.

§ 60. **The Right to Incorporate.**—There is no absolute right to incorporate which the state must recognize. Thus, where a proposed domestic corporation objected to the payment of the incorporation fees on the ground that it proposed to engage in interstate commerce and should not be hampered in such a project by the exaction of state fees, it was pointed out that “the sovereign power may grant or refuse to grant a franchise to a corporation upon such terms as it sees fit. If those proposing to incorporate do not like the terms, they need not incorporate. Nothing in the law prevents these petitioners as individuals from engaging in interstate or any other kind of commerce, but if they seek to create a new legal entity—a person and a citizen within the meaning of the constitution—for the purpose of engaging in business, and ask the state to give life to this creation, it will be done, and done only on such terms as the state may prescribe.”¹

§ 61. **Authority of the State Over Corporations.**—The right to exercise the privileges incident to corporate existence must, naturally, come from the state, whose general laws governing the conduct of individuals are thus adapted, in their application, to conditions surrounding artificial persons. Each corporation created under the general laws of a state derives its right to exist as a corporation, with all the incidents thereof, for the purpose of doing the business specified in its articles of incorporation, directly from the sovereign power, precisely the same as the corporation that formerly existed in England under special grant from the king, and later under special act of parliament, or the corporation that

¹ *City Properties Company v. Jordan*, 163 Cal. 587, 588, 126 Pac. 351.

in this country exists under special act of the legislative department of any of the states.²

While the authority of the state to grant or withhold the right to incorporate is supreme, at common law the right once granted might not be revoked by the state, the taking out of and the granting of the original charter being regarded as a contract between the state and the incorporators. In most cases, however, there is reserved to the state through constitutional and statutory provisions the right to withdraw all corporate privileges theretofore granted, this reservation becoming, as it were, a part of the original contract. Thus, in some states the legislature may at any time amend or repeal the corporation laws, and dissolve all corporations created thereunder. But such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

§ 62. Methods of Creating Corporations.—Corporate privileges were granted formerly in a "charter" by the king as he saw fit in each individual case. Parliament later exercised this power in the same manner. Gradually, however, general constitutional principles came to be recognized whereby, upon compliance therewith, bodies of men might secure from the legislative branch of the government a charter of incorporation. Such is still the practice in a few states and in some European countries. The most prevalent method, however, at the present time is to transfer, by means of constitutional and statutory provisions of a general nature, this power to some executive officer, such as the secretary of state. Incorporation is now effected through these general acts by compliance with prescribed formalities, the right of incorporation being open in general to any persons so complying. An exception, however, is finding vogue in the case of banking and similar corporations, it being a growing policy on the part of the states to require a finding on the part of some official that the public necessity or convenience requires the proposed incorporation before the certificate of incorporation can be issued. Special char-

² *Bank of California v. San Francisco*, 142 Cal. 276, 75 Pac. 832, 100 A. S. R. 130, 64 L. R. A. 918.

ters by the legislature are now almost universally prohibited by constitutional provisions.

The instrument by which a corporation is created, formerly termed a charter, is now referred to generally as a certificate of incorporation, this being granted by the proper official as a matter of course upon the presentation to him of articles of incorporation prepared in accordance with the legal requirements. When a certain course is prescribed by a statute to be pursued in organizing a corporation, it does not necessarily follow that any departure from that course will prevent a corporation from becoming one *de jure*. Whether or not such departure will have that effect depends on the nature of the provision which is violated. If it is a mandatory provision, a failure substantially to comply with its terms will prevent the corporation from becoming one *de jure*; but if the provision is merely directory, then a departure therefrom will not have that consequence.³

§ 63. Extent of Organization Prior to Incorporation.—To what extent a preliminary formal organization is necessary depends upon the requirements of the statutes of the several states and the construction placed upon them by the courts. In Pennsylvania, the requirement that the original application shall contain the names of the directors chosen for the first year has been construed plainly to indicate the necessity for an existing association already organized.⁴ In California, however, under a similar provision, such an association has been held to be unnecessary.⁵

A slightly modified preliminary organization is required in Nebraska. In Massachusetts, the entire organization, including the election of directors and the adoption of by-laws, must precede incorporation.

³ *J. W. Butler Paper Co. v. Cleveland*, 220 Ill. 128, 77 N. E. 99, 110 A. S. R. 230.

⁴ *Redmen's Mut. Rel. Assoc.*, 10 Phila. (Pa.) 546; *In re Gibb's Petition*, 3 Pittsb. (Pa.) 499.

⁵ *Roman Catholic Orphan Asylum v. Abrams*, 49 Cal. 455.

CHAPTER IX.

POWERS CONFERRED BY INCORPORATION.

- § 64. Extent of the Powers of a Corporation.
- § 65. Enumeration of Powers of Corporation.
- § 66. Incidental Powers and Implied Powers.
- § 67. Effect of Enumeration of Express Powers.
- § 68. Notice of Extent of Corporate Powers.
- § 69. Who May Question Powers of Corporation.
- § 70. The Power of Perpetual Succession.
- § 71. The Right to Sue and Be Sued.
- § 72. Stockholder's Suit on Behalf of Corporation.
- § 73. Jurisdiction of State and Federal Courts.
- § 74. The Power to Receive, Hold, and Convey Property.
- § 75. Power to Take Property by Will.
- § 76. Power to Hold Stock of Other Corporations.
- § 77. The Power to Appoint Officers and Agents.
- § 78. The Power to Make By-Laws.
- § 79. The Power to Admit New Members and Enforce Their Obligations to the Corporation.
- § 80. Ultra Vires Contracts.
- § 81. Power of Corporation to Purchase Its Own Stock.
- § 82. Certificate of Purchase of Its Own Shares.
- § 83. A Corporation Is Without Power to Practice Law.
- § 84. Power of Corporation to Mortgage Its Property.

§ 64. **Extent of the Powers of a Corporation.**—It is a well recognized principle and one distinctly set forth in the laws of most states that a corporation as such shall exercise only those powers which have been expressly granted by the general statutes under which it has been created or which are necessary and incident to the exercise of the powers so granted.¹ The court looks at the certificate of the promoters and the articles of incorporation in ascertaining the scope of the powers of a corporation organized under a general law, and its powers are such, only, as are therein specifically enumerated and such others as are incidental or necessary to carry the express powers into effect.² Not-

¹ Paterson, etc., Lumber Co. v. Mobile, 203 Ala. 536, 84 So. 721, 10 A. L. R. 1037; Thrailkill v. Crosbyton-Southplains R. Co., 246 Fed. 687, 158 C. C. A. 643, L. R. A. 1918C 90; Gregg v. Little Rock Chamber of Commerce, 120 Ark. 426, 179 S. W. 658, A. C. 1917C 784, L. R. A. 1916B 1006.

² National Union v. Keefe, 263 Ill. 453, 105 N. E. 319, A. C. 1915C 271.

withstanding a corporation may transact business in other jurisdictions, its charter or the laws to which it owes its existence have a paramount influence over its corporate powers wherever it undertakes to exercise them, and to determine the capacity or disability of a corporation, regard must primarily be had to the laws of the state from which it has derived its franchises.³

A corporation is an artificial being, created by law for special purposes. It stands, therefore, on a very different footing from a natural person. There is this distinction, it is said, between an individual and a corporation: "An individual may perform all acts and make all contracts which are not in the eye of the law inconsistent with the welfare of society; a corporation possesses only the powers and capacities which are specifically granted by the act of incorporation, and such as are necessary to carry into effect the powers expressly granted. And hence it can make only such contracts as are connected with the purpose for which it was created, and which are necessary, either directly or incidentally, to answer that end."⁴ A corporation entity has only such rights and powers as are conferred upon it by express or implied provisions of law. When not prohibited by law corporations have the implied power to make contracts that are fairly within the scope of the purposes of their creation.⁵

§ 65. Enumeration of Powers of Corporation.—Corporations, as a rule, are given power, among other things:

1. Of succession by corporate name, for the period limited; and when no period is limited, perpetually;
2. To sue and be sued, in any court;
3. To make and use a common seal, and alter the same at pleasure;
4. To purchase, hold, and convey such real and personal es-

³ American Water Works Co. v. Farmers' L. & T. Co., 20 Colo. 203, 37 Pac. 269, 46 A. S. R. 285, 25 L. R. A. 338.

⁴ New York Firemen Ins. Co. v. Ely, 5 Conn. 560, 13 A. D. 100; Abby v. Billups, 35 Miss. 618, 72 A. D. 143; Woods Lumber Co. v. Moore, 183 Cal. 497, 191 Pac. 905, 11 A. L. R. 549.

⁵ McQuaig v. Gulf Naval Stores Co., 56 Fla. 505, 47 So. 2, 131 A. S. R. 160; W. C. Bowman Lumber Co. v. Pierson, 110 Tex. 543, 221 S. W. 930, 11 A. L. R. 547; State v. Missouri Athletic Club, 261 Mo. 576, 170 S. W. 904, A. C. 1916D 931, L. R. A. 1915C 876.

tate as the purposes of the corporation may require, not exceeding the amount limited in this part;

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

§ 66. Incidental Powers and Implied Powers.—The foregoing powers are sometimes referred to as “incidental powers.” From these are implied numerous other powers of a more specific nature, the exercise of which is convenient or necessary to the accomplishment of the purposes for which the “incidental powers” are intended.⁶ Thus, where a corporation has been formed to “buy, improve, lease, sell, and otherwise dispose of real estate,” it may properly appropriate a portion of its funds to a railroad in the vicinity in order to increase the facilities and lessen the cost of transportation, where the direct and proximate tendency of such increase is to enhance the value of its lands. Such an act must, however, tend directly and immediately, and not merely slightly and remotely, to accomplish the object for which the corporation was formed. In the foregoing case, for instance, the corporation could not legally establish a line of steamers to Japan on the plea that the increase in population would promote general prosperity and thereby enhance the value of the corporate property.⁷

It is not necessary that a corporation should exercise its powers in the usual way to the exclusion of new methods of accomplish-

⁶ *McQuaid v. Ent. Brewing Co.*, 14 Cal. App. 315, 111 Pac. 927; *Central Ohio, etc., Co. v. Capital City Dairy Co.*, 60 Ohio St. 96, 53 N. E. 711, 64 L. R. A. 395.

⁷ *Vandall v. South San Francisco Dock Co.*, 40 Cal. 83.

ing some of its purposes.⁸ "In this country, all corporations, whether public or private, derive their powers from legislative grant, and can do no act for which authority is not expressly given or may not be reasonably inferred. But if we were to say that they can do nothing for which a warrant could not be found in the language of their charters, we should deny to them, in some cases, the power of self-preservation, as well as many of the means necessary to effect the essential objects of their incorporation. And therefore, it has long been an established principle in the law of corporations that they may exercise all the powers within the fair intent and purpose of their creation which are reasonably proper to give effect to powers expressly granted. In doing this they must have a choice of means adapted to ends, and are not to be confined to any one mode of operation."⁹

The implied powers of a corporation are not limited to such as are indispensably necessary to carry into effect those expressly granted, but comprise all that are necessary in the sense of being appropriate, convenient and suitable for such purposes, including the right to a reasonable choice of means to be employed.¹⁰ They must result from the charter by necessary implication, regard being had to the object and purpose of the corporation, and if the means employed are reasonably adapted to the ends for which the corporation was created, they come within its implied or incidental powers, although they may not be specifically designated by the act of incorporation.¹¹

An incidental power may be defined to be one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has merely some slight or remote relation to it.¹²

"Whatever be a company's legitimate business, the company may foster it by all the usual means; but it may not go beyond

⁸ *Madison, etc., v. Watertown, etc., Co.*, 5 Wis. 173; *Clark v. Farrington*, 11 Wis. 306.

⁹ *Bridgeport v. Housatonic R. Co.*, 15 Conn. 475.

¹⁰ *Gause v. Commonwealth Trust Co.*, 196 N. Y. 134, 89 N. E. 476, 24 L. R. A. (N. S.) 967.

¹¹ *Gregg v. Little Rock Chamber of Commerce*, 120 Ark. 426, 179 S. W. 658, A. C. 1917C 786, 787, L. R. A. 1916B 1006, quoting 10 Cyc. 1097.

¹² *Hood v. New York*, 22 Conn. 1, 16; *Nicollet Nat. Bank v. Frisk-Turner Co.*, 71 Minn. 413, 74 N. W. 160, 70 A. S. R. 334.

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this. It may not, under the pretext of fostering, entangle itself in proceedings with which it has no legitimate concern. . . . The courts have, however, determined that such means shall be direct, not indirect, *i. e.*, that a company shall not enter into engagements, as the rendering of assistance to other undertakings from which it anticipates a benefit to itself, not immediately, but immediately by reaction, as it were, from the success of the operations thus encouraged—all such proceedings inevitably tending to breaches of duty on part of the directors, to abandonment of its peculiar objects on part of the corporation.”¹³

In short, if the means be such as are usually resorted to and a direct method of accomplishing the purpose of the corporation, they are within its powers; if they be unusual and tend in an indirect manner only to promote its interests, they are held to be *ultra vires*.¹⁴

§ 67. Effect of Enumeration of Express Powers.—The rule that the specification of certain powers operates as a restraint to such objects only, and is an implied prohibition of the exercise of other and distinct powers,¹⁵ is subject to the qualification that the failure to enumerate in the charter the powers intended to be conferred does not deprive a corporation of such incidental powers as are reasonably necessary to accomplish the purpose for which it was organized,¹⁶ since in every express grant of power to a corporation there is implied a power to do whatever is necessary or reasonably appropriate to the exercise of the authority expressly conferred.¹⁷

§ 68. Notice of Extent of Corporate Powers.—Although the powers of corporations are derived solely from statutes, and

¹³ Green's Brice's *Ultra Vires*, 88, quoted in *Northside Ry. Co. v. Worthington*, 88 Tex. 562, 30 S. W. 1055, 53 A. S. R. 782.

¹⁴ *Northside Ry. Co. v. Worthington*, 88 Tex. 562, 30 S. W. 1055, 53 A. S. R. 782.

¹⁵ *Calumet, etc., Canal, etc., Co. v. Conkling*, 273 Ill. 318, 112 N. E. 982, L. R. A. 1917B 814; *State v. Missouri Athletic Club*, 261 Mo. 576, 170 S. W. 904, A. C. 1916D 931, L. R. A. 1915C 876.

¹⁶ *Doty v. American Telephone, etc., Co.*, 123 Tenn. 329, 130 S. W. 1053, A. C. 1912C 167.

¹⁷ *Northside Ry. Co. v. Worthington*, 88 Tex. 562, 30 S. W. 1055, 53 A. S. R. 782.

every person is bound, in dealing with a corporation, to take notice of the extent of its powers,¹⁸ it has been held that where a foreign insurance corporation complies with the laws entitling it to do business within the state, citizens thereof dealing with it in that state are not guilty of negligence in failing to ascertain its charter powers, and it cannot escape liability on its contracts with such citizens on the ground that it was not authorized to enter into them;¹⁹ nor do irregularities in the exercise of a corporate power come within the applications of the general rule.²⁰

§ 69. Who May Question Powers of Corporation.—Formerly, want of corporate power was an effective weapon both for defense and attack, in the hands of private parties; but without any change whatever respecting the general doctrine of *ultra vires* as applied to the acts of corporations acting outside the purposes of their creation, there has been a gradual development in the direction of holding that none but a person directly interested in the corporation, or the state, can question such authority.¹

If a corporation exceeds its corporate power, it may thereby forfeit its charter, which forfeiture may be enforced at the instance of the sovereignty;² or, in a proper case, a court of equity may at the instance of the sovereignty or of the attorney-general as its representative, or of a stockholder, restrain a corporation from continuing in the exercise of powers which it does not possess.³

§ 70. The Power of Perpetual Succession.—A corporation in so far as it may be affected by the life or death of its individual members or stockholders may be said to be immortal. No dissolution, as in the case of the death of a partner, results from an

¹⁸ *Staacke v. Routledge*, 111 Tex. 489, 241 S. W. 994; *American Southern Nat. Bank v. Smith*, 170 Ky. 512, 186 S. W. 482, A. C. 1918B 959.

¹⁹ *Minneapolis Fire, etc., Co. v. Norman*, 74 Ark. 190, 85 S. W. 229, 109 A. S. R. 74, 4 A. C. 1045.

²⁰ *Ashley Wire Co. v. Illinois Steel Co.*, 164 Ill. 149, 45 N. E. 410, 56 A. S. R. 187.

¹ *Osborn v. Texas Pacific Coal, etc., Co.* (Tex. Civ. App.), 229 S. W. 359; *Staacke v. Routledge*, 111 Tex. 489, 241 S. W. 994.

² *Terrett v. Taylor*, 9 Cranch 43, 3 L. Ed. 650.

³ *Clark v. Groger*, 102 Wash. 188, 172 Pac. 1164.

individual death. Although the statutes of most states describe this succession as "perpetual," it has been clearly decided by the courts that where there is a general law limiting the duration of a corporation to a specified number of years, the words "perpetual succession" must be construed to mean continuous or uninterrupted succession, and not as defining its duration.⁴

§ 71. The Right to Sue and Be Sued.—Such a necessary incident to corporate existence is the right to sue and be sued that, even in the absence of the usual constitutional and legislative grant of the power, it may be exercised by a body given corporate powers in general.⁵

Corporations are liable as individuals, civilly and criminally, for torts committed by their agents or servants, and should, on principles of even-handed justice, be held entitled to its protection for all injuries suffered by them at the hands of others.⁶

A corporation may sue in its own name, without any necessity of designating its president or any of its other officers in the petition, since a corporation is a person, and does not labor under any incapacity, like a minor.⁷

Corporations, like individuals, may be compelled through their officers to produce their papers and records under subpoena *duces tecum*.⁸

Directors of a corporation possess sufficient authority with reference to suits that, acting in good faith and in the exercise of their best judgment, they may settle a pending action, and such settlement is binding upon the stockholders, even though it subsequently appear that they failed to secure the best terms to which the corporation was entitled.⁹

⁴ State v. Payne, 129 Mo. 468, 31 S. W. 797, 33 L. R. A. 576; Fairchild v. Hunt, 5 Mo. App. 583; State v. Hannibal, etc., 138 Mo. 332, 39 S. W. 910, 36 L. R. A. 457; State v. Lesueur, 141 Mo. 29, 41 S. W. 904.

⁵ Martin v. Kentucky Land Inv. Co., 146 Ky. 525, 142 S. W. 1038, A. C. 1913C 332; Capital Lumbering Co. v. Learned, 36 Ore. 544, 59 Pac. 454, 78 A. S. R. 792.

⁶ Trenton Mutual Life, etc., Ins. Co. v. Perrine, 23 N. J. L. (3 Zab.) 402, 57 A. D. 400.

⁷ New Orleans Terminal Co. v. Teller, 113 La. 733, 37 So. 624, 2 A. C. 127.

⁸ American Car, etc., Co. v. Alexandria Water Co., 221 Pa. St. 529, 70 Atl. 867, 128 A. S. R. 749, 15 A. C. 641.

⁹ Donohoe v. Mariposa, etc., Co., 66 Cal. 317, 5 Pac. 495.

§ 72. Stockholder's Suit on Behalf of Corporation.—Upon the refusal of the directors to bring suit after demand in a proper case, or to defend a suit brought against the corporation, any stockholder may sue or defend in the name of and for the corporation.¹⁰ A member or stockholder cannot have redress for any wrong or injury to the corporation until he has exhausted all the means within his reach to obtain redress from the managing body of the corporation, and the corporation itself has failed after proper application to it to bring suit.¹¹ But, however, where the corporate officers fail to comply with the proper demand, the stockholder may sue.¹²

Ordinarily a corporation is the proper party to maintain an action for fraud, malfeasance or misfeasance of its officers, but where the officers and directors of a corporation are charged with conspiracy to defraud the corporation and its stockholders by issuing large amounts of stock to themselves without any consideration being paid therefor and such officers and directors are in full control of the corporation, a stockholder may maintain an action against such directors and officers.¹³ The right of a stockholder to bring an action to protect his interest and the interest of other stockholders is well recognized by the courts of this country.¹⁴ If the officers of a corporation wrongfully deal with its property, to the injury of the stockholders, the latter may maintain a bill against the corporation and its officers for such relief against such misappropriation.¹⁵

§ 73. Jurisdiction of State and Federal Courts.—Upon the residence of a corporation as determined by the place of its incorporation depends at times the jurisdiction of the particular court in which an action may be brought. Thus, a corporation whose original certificate of incorporation was obtained in one

¹⁰ Cogswell v. Bull, 39 Cal. 320; Waymire v. San Francisco & S. M. R. Co., 112 Cal. 646, 44 Pac. 1086.

¹¹ Savings & Trust Co. v. Bear Valley Irr. Co., 112 Fed. 693.

¹² Burbank v. Dennis, 101 Cal. 90, 35 Pac. 444.

¹³ Ryan v. Old Veteran Mining Co., 37 Idaho 625, 218 Pac. 381.

¹⁴ Klein v. Peter, 284 Fed. 797, 29 A. L. R. 1497.

¹⁵ Pollitz v. Michigan R. Commission, 205 Mich. 549, 172 N. W. 611.

state may have transferred to a federal court an action brought against it by a citizen of another state in a state court.¹⁶

While a corporation should not be deemed to have a residence for the purpose of being sued in every county in the state by which it was created, it should be deemed to have a residence where it exercises corporate powers and functions, and where it has its place of business.¹⁷

§ 74. The Power to Receive, Hold, and Convey Property.

—The amount and character of the property which a corporation may acquire depends entirely upon the purpose for which the corporation was formed as set forth in its articles of incorporation. This is true of both personal¹⁸ and real property. States in their statutes take special care, however, to make this principle apply to dealings by corporations in real property. No corporation may, as a general rule, acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works. Upon the nature of the business, therefore, depends the amount and location of the real property necessary for the corporate plant. The very business itself may be the purchasing, holding and selling of land; in which case the power in that direction is practically unlimited. It is to be presumed, in the absence of evidence as to the purposes for which a corporation has been formed, that any land which it may have acquired is rightfully held by it.¹⁹ Every corporation is presumed to have power to purchase and hold real estate, and if there is anything in its charter, or the business in which it is engaged, or the law under which it is organized, abridging this power, it must be shown affirmatively.²⁰ Nor can the power of a corporation to hold a particular piece of property be questioned by a mere intruder upon such property who claims no affirmative right himself.¹ Either real² or personal³ property

¹⁶ *Connor v. Vicksburg, etc., R. Co.*, 36 Fed. 273, 1 L. R. A. 331.

¹⁷ *Hildebrand v. United Artisans*, 46 Ore. 134, 79 Pac. 347, 114 A. S. R. 852.

¹⁸ *Pearce v. Madison, etc., R. Co.*, 21 How. (U. S.) 441, 16 L. Ed. 184.

¹⁹ *Stockton S. B. v. Staples*, 98 Cal. 189, 32 Pac. 936.

²⁰ *Granite G. M. Co. v. Maginness*, 118 Cal. 131, 50 Pac. 269.

¹ *Stockton & Linden Gravel Road Co. v. Stockton & C. R. Co.*, 45 Cal. 680.

² *Thompson v. Waters*, 25 Mich. 214, 12 A. R. 243.

³ *Rosenbaum v. Horton*, 89 Iowa 692, 57 N. W. 609; *De Groff v. American*

may be taken by a corporation in payment of or security for a debt due it. Otherwise it would be without adequate means of protection in such cases. A constitutional provision that a corporation shall not "hold for a longer period than five years any real estate, except such as may be necessary for carrying on its business," is not self-executing, and, therefore, in the absence of action by the legislature prescribing a penalty for holding such real estate longer than five years, the property cannot be made to escheat to the state or the corporation so holding it otherwise penalized.⁴

A corporation to dissolve, which proceedings have been instituted on behalf of the state, has at any time prior to the decree of dissolution the same power to dispose of its property honestly and in good faith that any other corporation has.⁵

§ 75. Power to Take Property by Will.—The power of a corporation to take property by will is frequently limited in certain respects by statute. In some states, devises and bequests, especially to benevolent corporations, must be attended with extra formalities, and are frequently limited in amount to a certain proportion of the whole estate of the deceased. Corporations generally have the power to take by will,⁶ although there are a few states in which the power is limited.⁷

§ 76. Power to Hold Stock of Other Corporations.—Although it is well settled in England that one corporation may deal in the shares of another unless expressly prohibited, or

Linen Thread Co., 21 N. Y. 124; *Panhandle Natl. Bank v. Emery*, 78 Tex. 498, 15 S. W. 23.

⁴ *People v. Stockton Sav. & Loan Soc.*, 133 Cal. 611, 65 Pac. 1078, 85 A. S. R. 225; *Commonwealth v. New York L. E. & W. R. Co.*, 132 Pa. St. 605, 19 Atl. 291, 7 L. R. A. 634.

⁵ *Havemeyer v. Superior Ct.*, 84 Cal. 327, 24 Pac. 121, 18 A. S. R. 192, 10 L. R. A. 627.

⁶ *Perin v. Carey*, 24 How. 465, 16 L. Ed. 701; *Santa Clara Female Academy v. Sullivan*, 116 Ill. 375, 6 N. E. 183, 56 A. R. 776; *Moore's Heirs v. Moore's Devisees*, 4 Dana (Ky.) 354, 29 A. D. 417.

⁷ *McCartee v. Orphan Asylum Soc.*, 9 Cow. (N. Y.) 437, 18 A. D. 516; *Downing v. Marshall*, 23 N. Y. 366, 80 A. D. 290; *In re Fox*, 52 N. Y. 530, 11 A. R. 751; *In re McGraw's Estate*, 111 N. Y. 66, 19 N. E. 233, 2 L. R. A. 387; *Starkweather v. American Bible Soc.*, 72 Ill. 50, 22 A. R. 133.

unless the nature of a corporate business renders it improper, the prevailing view in this country is that a corporation has no power to purchase and hold the stock of another corporation unless this power is clearly granted by its charter.⁸ Without express authority one corporation cannot subscribe for, or invest its own capital in, the shares of other corporations, either directly, as by becoming in its own name an incorporator of a new corporation, or indirectly by subscriptions in the names of persons acting as agents and holding as its trustees. And it is equally clear, upon principle and authority, that all such attempted subscriptions or contracts of subscription are not voidable, but utterly void.⁹

The charter is the full measure of the powers which the corporation possesses. It cannot lawfully exercise any others. In ordinary cases every corporation is just what the incorporating act has made it, and it is capable of exercising its faculties only in the manner the act authorizes.¹⁰ And, as charters are usually granted at the request of the incorporators, they are construed most strongly, against the corporation. Nothing is granted except what is given expressly or by fair implication. And no other powers can be implied except such as are necessary and proper to carry into effect the power expressly granted.¹¹

Whether the purchase by a corporation of shares in another

⁸ *People v. Union Gas, etc., Co.*, 254 Ill. 395, 98 N. E. 768, A. C. 1916B 201; *Hyams v. Old Dominion Co.*, 113 Me. 294, 93 Atl. 747, L. R. A. 1915D 1128; *Nashville Fourth Nat. Bank v. Stahlman*, 132 Tenn. 367, 178 S. W. 942, L. R. A. 1916A 568.

⁹ *Marble Co. v. Harvey*, 92 Tenn. 115, 20 S. W. 427; 36 A. S. R. 71; 18 L. R. A. 252; *Central R. R. Co. v. Pennsylvania R. R. Co.*, 31 N. J. Eq. 475; *Commercial Fire Ins. Co. v. Board of Revenue*, 99 Ala. 1, 14 So. 490, 42 A. S. R. 17; *Lanier Lumber Co. v. Rees*, 103 Ala. 622, 16 So. 637, 49 A. S. R. 58.

¹⁰ *Farrell v. Winchester Ave. R. Co.*, 61 Conn. 127, 23 Atl. 757; *Berlin v. New Britain School Section*, 9 Conn. 180; *Bank of Augusta v. Earle*, 38 U. S. (13 Pet.) 587, 10 L. Ed. 307.

¹¹ 2 Kent. Com. 298; *New York Firemen's Ins. Co. v. Ely*, 5 Conn. 560, 13 A. D. 100; *Mechanics & Workingmen's Mut. Sav. Bank & Bldg. Asso. v. Meriden Agency Co.*, 24 Conn. 159; *Sumner v. Marcy*, 3 Woodb. & M. 112, Fed. Cas. No. 13,609; *Franklin Co. v. Lewiston Inst. for Savings*, 68 Me. 43, 28 A. R. 9; *Bryne v. Schuyler Electric Manufacturing Co.*, 65 Conn. 336, 31 Atl. 833, 28 L. R. A. 307.

corporation is beyond its powers, or a proper exercise thereof, depends upon the purpose for which it is made, and whether, under the circumstances, it is a reasonable or necessary means of carrying out corporate objects.¹² When the question is brought before the courts, they will judge in each instance whether there has been a reasonable and legitimate exercise of an incidental power, or a diversion of corporate funds. A corporation cannot permanently invest its funds in the stock of another corporation whose business is in no way related to or similar to its own; for by so doing it is interesting itself in the business of the latter in addition to the business for the purpose of conducting which it was incorporated itself.¹³ Stock in another corporation, however, may be held temporarily, as security, for instance, for a loan or other indebtedness to the holding corporation, or it may be taken in payment for debt.¹⁴ When, however, the title to such stock vests in the corporation, as in a case where it has been taken in satisfaction of a debt, it is the duty of the corporation to dispose of it as soon as practicable.¹⁵ It is not to be understood, however, that a corporation chartered for the purpose, or created for that purpose, expressed in its articles, may not deal in stocks exclusively. And there can be no objection to a corporation being so formed under a statute providing that corporations may be formed for any purpose for which individuals may lawfully associate themselves.¹⁶

§ 77. The Power to Appoint Officers and Agents.—That a corporation may, or rather, must, perform its functions through natural agents is manifest from a consideration of the fact that it has no individual natural existence. Their relations to the corporation and the responsibility of the latter for their transac-

¹² *Hill v. Nisbet*, 100 Ind. 341.

¹³ *Knowles v. Sandercock*, 107 Cal. 629, 643, 40 Pac. 1047.

¹⁴ *Kennedy v. California Savings Bank*, 101 Cal. 495, 35 Pac. 1039; 40 A. S. R. 69; *Charlotte First Nat. Bank v. Nat. Exch. Bank of Baltimore*, 92 U. S. 122, 23 L. Ed. 679; *Memphis, etc., R. Co. v. Woods*, 88 Ala. 630, 7 So. 108, 16 A. S. R. 81, 7 L. R. A. 605; *Westminster National Bank v. New England Electrical Works*, 73 N. H. 465, 62 Atl. 971, 111 A. S. R. 637, 3 L. R. A. (N. S.) 551.

¹⁵ *McBoyle v. Union Nat. Bank*, 162 Cal. 277, 281, 122 Pac. 458.

¹⁶ *Market St. R. Co. v. Hellman*, 109 Cal. 571, 590, 42 Pac. 225.

tions with third persons rest upon the same general principles that govern the relation of principal and agent in the case of natural persons. The public nature of the records of a corporation affects in many instances the degree of notice which third persons may be expected to have of the extent of the authority of its agents.¹⁷

The purpose for which a corporation was formed, as shown by its articles of incorporation, is presumed to be known to the public, who are therefore in a position to know to what extent an officer or an agent is acting within his authority. Specific statutory limitations are frequently placed upon the authority of certain officers when handling certain transactions, such, for instance, as the sale of real property, prescribing not only what officers may so act, but also when, under what circumstances, and in what manner. So, also, the law generally prescribes that every corporation must have certain officers, such as a president, a secretary, and a treasurer, a knowledge of whose duties in general is expected of the public. A subordinate officer must not be expected to have authority to perform functions ordinarily exercised by those higher up.¹⁸

In order to establish an agency from a corporation, or an authority in a known and recognized agent to do certain acts on behalf of a corporation, it is not indispensable to show a written authority, or vote, or resolution of the corporation.¹⁹

The agent or agents employed may be called president, director, trustee, cashier, or secretary, without altering substantially their character as agents.²⁰

§ 78. The power to Make By-Laws.—A corporation may begin to live the moment its charter issues, or its articles are filed in the proper offices, but it may not be able to act for the purposes of its creation until those to whom the franchises are given, and who make up its units, have agreed how it shall act, what it shall

¹⁷ *Bank of Healdsburg v. Bailhache*, 65 Cal. 327, 4 Pac. 106.

¹⁸ *Stevens v. Carp River Iron Co.*, 57 Mich. 427, 24 N. W. 160.

¹⁹ *Williams v. Christian Female College*, 29 Mo. 250, 77 A. D. 569; *Curtin v. Salmon River Hydraulic Gold Min. Co.*, 141 Cal. 308, 74 Pac. 851.

²⁰ *Directors, etc., of St. Andrews Bay Land Co. v. Mitchell*, 4 Fla. 192, 54 A. D. 340.

do, and who shall immediately conduct its affairs. By its by-laws the management of a corporation's affairs is regulated. They are adopted, in the first instance, by the members or stockholders of the corporation; and, when adopted, they become as binding upon every member as the charter itself, into which they are written, as the corporation's rule of conduct. The statutes generally prescribe the subjects which may be dealt with in the by-laws. The power to enact by-laws is implied in the creation of a corporation, subject to the limitations that the charter powers of the corporation may not be exceeded therein. This power is usually conferred in express terms by the law from which the corporate existence is derived.¹ The power to make by-laws implies the power to alter or repeal.²

§ 79. The Power to Admit New Members and Enforce Their Obligations to the Corporation.—The power to admit new members to whom stock has been transferred by sale or operation of law is essential to the enjoyment of the first mentioned power, that of perpetual succession. So also must the corporation have the power to continue in business by enforcing, without constant resort to the courts and subsequent delay, the obligations of stockholders and members to contribute to the support of the enterprise; to this end the corporation may sell their stock or shares for the payment of assessments or installments.

§ 80. Ultra Vires Contracts.—In order that the power of the corporation to make contracts, in other words, transact business, may be exercised to the full extent desired by the incorporators, great care must have been taken in drafting that section of the articles which outlined the purposes for which the corporation was organized; for, as pointed out heretofore, the subject matter of all corporate contracts must have relation to some project which tends proximately to further the avowed objects of the corporation. Contracts which do not conform to this requirement are said to be *ultra vires* or "beyond the power" of the corpora-

¹ Supreme Commandery of Knights of Golden Rule v. Ainsworth, 71 Ala. 436, 46 A. R. 332. See, also, chapter "By-Laws."

² Mooney v. Farmers' Mercantile, etc., Co., 138 Minn. 199, 164 N. W. 805.

tion.³ While the corporation may refuse to carry out the terms of any such unauthorized contract, it cannot, with any greater privilege than an individual, set up such a defense in a suit against the corporation where it has retained the benefits of the transaction. In fact, the defense of "*ultra vires*" is looked upon by the courts with disfavor, and a contract which is not upon its face clearly beyond the scope of the authority of the corporation making it will, in the absence of affirmative proof to the contrary, be presumed valid.⁴ It is generally held that a corporation which has received the benefits of a strictly *ultra vires* contract will not be allowed to set up the defense of *ultra vires* when sued upon the contract.⁵

§ 81. Power of Corporation to Purchase Its Own Stock.—

It is the prevailing rule in this country, that in the absence of any restrictions imposed by its charter or the general laws, a corporation has power, where the interests of its existing creditors are not adversely affected, to purchase its own capital stock.⁶ It has been held, however, that a corporation may not purchase its own stock, since the result would be illegally to withdraw and pay to a stockholder a part of the capital stock, and

³ *American Southern Bank v. Smith*, 170 Ky. 512, 186 S. W. 482, A. C. 1918B 959.

⁴ *Thrailkill v. Crosbyton-Southplains R. Co.*, 246 Fed. 637, 158 C. C. A. 643, L. R. A. 1918C 90; *Dillon v. Myers*, 58 Colo. 492, 146 Pac. 268, A. C. 1916C 1032; *Crowder State Bank v. Aetna Powder Co.*, 41 Okla. 394, 138 Pac. 392, L. R. A. 1917A 1021; *Memphis, etc., River Packet Co. v. Agnew*, 132 Tenn. 265, 177 S. W. 949, L. R. A. 1916A 640; *Creditors' Claim, etc., Co. v. Northwest Loan, etc., Co.*, 81 Wash. 247, 142 Pac. 670, A. C. 1916D 551, L. R. A. 1917A 737.

⁵ *Chewacla Lime Works v. Dismukes*, 87 Ala. 344, 6 So. 122, 5 L. R. A. 100; *Kadish v. Garden City Equitable Loan, etc., Assn.*, 151 Ill. 531, 38 N. E. 236, 42 A. S. R. 256; *Nashua, etc., R. Corp. v. Boston, etc., R. Corp.*, 164 Mass. 222; 41 N. E. 268, 49 A. S. R. 454; *Seymour v. Spring Forest Cemetery Assoc.*, 144 N. Y. 333, 39 N. E. 365, 26 L. R. A. 859; *Zinc Carbonate Co. v. Shullsburgh First Nat. Bank*, 103 Wis. 125, 79 N. W. 229, 74 A. S. R. 845.

⁶ *Keith v. Kilmer*, 261 Fed. 733, 9 A. L. R. 1287; *New England Trust Co. v. Abbott*, 162 Mass. 148, 38 N. E. 432, 27 L. R. A. 271; *Porter v. Plymouth Gold Mining Co.*, 29 Mont. 347, 74 Pac. 938; *United States Min. Co. v. Camden*, 106 Va. 663; 56 S. E. 561, 117 A. S. R. 1023.

is therefore *ultra vires*.⁷ The rule prohibiting a corporation from buying its own stock does not, however, prevent it from taking such stock in satisfaction of a loan, or when otherwise necessary to save itself from loss.⁸ Nor is a corporation prohibited from purchasing its own stock in default of other bidders at a delinquent assessment sale; but in such case the stock is not held as property of the corporation but is held subject to the control and disposition of the stockholders.⁹ Constitutional or statutory provisions imposing upon stockholders a special liability for the corporate debts, and the want of power to reduce a corporation's authorized capital stock by purchasing its own shares for cancellation have been the main reasons in denying the power of a corporation to purchase its own stock.¹⁰

§ 82. Certificate of Purchase of Its Own Shares.

We, Lloyd Graves, President, and Wallace Payne, Treasurer of The Hartford Automobile Company, a corporation organized under the statute laws of the State of Connecticut, and located in the Town of Danbury, in said State, hereby certify that at a meeting of the Stockholders of said corporation specially warned for that purpose, held at Danbury, in said State, on the 7th day of October, 1926, a resolution approving of the acquisition by said corporation of ten shares of its own stock was adopted by a vote of three-fourths of the entire outstanding capital stock, at which meeting said corporation did not vote upon any shares of its own stock held by it; and

Since the adoption of said resolution said corporation has acquired and now holds ten shares of its own common stock. The following is a copy of the foregoing resolution:

RESOLVED, That this Company acquire ten shares par value one hundred dollars, of its capital stock.

RESOLVED: That the Directors be and they hereby are authorized to acquire such stock.

RESOLVED: That the Directors be authorized to sell or otherwise dis-

⁷ Bank of San Luis Obispo v. Wickersham, 99 Cal. 655, 34 Pac. 444; Fitzpatrick v. McGregor, 133 Ga. 332, 65 S. E. 859, 25 L. R. A. (N. S.) 50.

⁸ Stewart v. Stewart Hotel Co., 33 Cal. App. 167, 164 Pac. 620.

⁹ Robinson v. Spaulding Gold, etc., Co., 72 Cal. 32, 13 Pac. 65.

¹⁰ Cartwright v. Dickinson, 88 Tenn. 476, 12 S. W. 1030, 17 A. S. R. 910, 7 L. R. A. 706.

pose of such stock when acquired, at such time or times and in such manner as to them may seem advisable.

LLOYD GRAVES, President.

WALLACE PAYNE, Treasurer.

Dated at Danbury, this 7th day of October, 1926.

State of Connecticut }
County of Fairfield } ss.

Personally appeared Lloyd Graves, President and Wallace Payne, Treasurer of The Hartford Automobile Company and made oath to the truth of the foregoing certificate, by them signed, before me,

ALFRED WARNER.

Notary Public.

Justice of the Peace.

§ 83. A Corporation Is Without Power to Practice Law.—

Individuals may not, either singly or in association, engage in the practice of the law without having a license so to do, and hence individuals forming a corporation for the practice of law cannot, under a statute providing that "private corporations may be formed for any purposes for which individuals may lawfully associate themselves," gain any other or further right by the act of incorporation than that lawfully possessed either singly or in the aggregate, without incorporation.¹¹

As a corporation cannot practice law directly, it cannot do so indirectly by employing competent lawyers to practice for it, as that would be an evasion which the law will not tolerate.¹²

§ 84. Power of Corporation to Mortgage Its Property.—

The implied power of a corporation to mortgage its property is coextensive only with the power to alienate absolutely, since every mortgage may become an absolute conveyance by foreclosure, and where from the nature of the property and the character of the corporation there is no authority to alienate, there is no implied power to mortgage.¹³ It has been held, however, that

¹¹ *People v. Merchants Protective Corp.*, 189 Cal. 531, 209 Pac. 363.

¹² 2 R. C. L. 946; *In re Co-operative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 139 A. S. R. 839, 19 A. C. 879, 32 L. R. A. (N. S.) 55; *State ex rel. Lundin v. Merchants' Protective Assn.*, 105 Wash. 12, 177 Pac. 694.

¹³ *Richardson v. Sibley*, 11 Allen (Mass.) 65, 87 A. D. 700. See, also, chapter "Mortgage of Corporate Property."

the general power to borrow money carried by implication authority to mortgage the corporate property to secure the debt.¹⁴

As a prerequisite to the making of a corporate mortgage it is sometimes required by the charter or a general law that the consent of a certain number of the stockholders shall be given, and such consent should be given at a duly convened stockholders' meeting.

While a mortgage, as in case of other conveyances, should be executed in the name of the corporation, it need not necessarily be made and signed in the name of the corporation to render the corporation liable thereon, if it was the intention of the parties to bind the corporation.¹⁵

¹⁴ *Leggett v. New Jersey Mfg., etc., Co.*, 1 N. J., Eq. 541, 23 A. D. 728; *Eastman v. Parkinson*, 133 Wis. 375, 113 N. W. 649, 13 L. R. A. 921.

¹⁵ *Jones v. Williams*, 139 Mo. 1, 39 S. W. 486, 40 S. W. 353, 61 A. S. R. 436, 37 L. R. A. 682; *Traynham v. Jackson*, 15 Tex. 170, 65 A. D. 152.

CHAPTER X.

WHERE TO INCORPORATE.

§ 85. In General.

§ 86. Things to Be Considered in Determining Place of Incorporation.

§ 85. **In General.**—A question that will often confront the organizers of a corporation is to determine under the laws of what state to incorporate. It is the universal doctrine that where citizens of one state desire to do business under a charter from a state whose corporation laws seem more desirable to them than those of their own state, they have a right to do so upon compliance with the laws of such other state.¹

If a business is of any magnitude the question of the best jurisdiction under which to incorporate is one of great importance and calls for the judgment of a corporation lawyer of experience. A small business is as a general rule incorporated under the laws of the state in which the incorporators reside. The minor disadvantages or inconveniences of organization under a foreign state usually turn the scale. But a large business or one whose operations are of a complicated nature generally requires to be incorporated under the laws of one of the states whose provisions relating to incorporation are more liberal. Many of the states have so liberalized their corporation laws as to be fairly open to the charge of bidding for business.

§ 86. **Things to Be Considered in Determining Place of Incorporation.**—It has become customary for the experienced corporation lawyer to inquire where is the best place to incorporate for particular businesses. Among the various matters which enter into the determination of the question where the corporation shall be incorporated are the following: (1) Whether the provisions of the laws under which it is proposed to incorporate are plain and clear, and whether the courts have passed upon their meaning; (2) whether part or all of the incorporators must be residents of the state; (3) whether directors are liable for paying dividends out of the capital, or whether shareholders are liable

¹ *Boatman's Bank v. Gillespie*, 209 Mo. 217, 108 S. W. 74.

for receiving such dividends, not knowing that they have been so paid out of capital; (4) whether there is a maximum or minimum limit of the capital stock, and a limit to corporate indebtedness; (5) what part of the stock is required to be subscribed, or paid in before doing business; (6) whether stock can be paid for in property or in services and whether the valuation thereof by the directors is conclusive in the absence of fraud; (7) whether the shareholders' or directors' meetings must be held within the incorporating state; (8) whether the shareholders are authorized to vote by proxy or to accumulate their votes; (9) whether there is any statutory liability upon shareholders or directors for debts of the corporation, or for failure to make certain reports; (10) whether the records, the minute book, account book, and stock books must be kept within the state, and to be open to inspection of shareholders or public officers; (11) whether annual reports as to names of officers, directors, shareholders, and details as to paid up capital, debts, and operations are required; (12) fees for filing incorporation papers; (13) the period of duration permitted by the state; (14) whether there is an annual franchise tax, and the amount thereof; (15) the extent to which the legislature controls and regulates; (16) whether there is any inheritance tax on stock; (17) whether the purposes for which the proposed corporation is to be formed are permitted by the state; (18) the amount of the capitalization and the par value of the stock permitted by the state; (19) the extent of powers permitted; (20) whether preferred or nonpar value stock can be issued; (21) whether stock in other corporations can be held; (22) the time allowed before capital stock must be paid up; (23) the number of directors and their qualifications; (24) whether the principal place of business and principal office may be out of the state of origin; (25) liberality of the laws permitting the amendment of the charter; (26) whether a majority of the stockholders or directors may act without calling a meeting or not; (27) extent of publicity required as to the condition of the affairs of the corporation; (28) liability of stockholders and directors; (29) whether it is easy or difficult to dissolve the corporation; (30) whether the state in question permits voting trusts.

CHAPTER XI.

THE CORPORATE NAME.

§ 87. The Name of the Corporation.

§ 88. Use of Family Name as Part of Corporate Name.

§ 89. Certificate of Authority to Use Corporate Name.

§ 87. **The Name of the Corporation.**—The importance of the name may vary according to whether the question is viewed from a legal or a practical standpoint. It has well been said that “The name is an indispensable part of the constitution of every corporation, the knot of its combination, as it has been called, without which it cannot perform its corporate functions.”¹ It is peculiarly important as necessary to the very existence of the corporation.² A wrong or misleading name would not limit or enlarge the powers of the corporation. To determine these, the clause expressing the purposes, and other parts of the articles must be considered. But it is obvious that a misleading name would prejudice the corporate enterprise from the standpoint of business, and might be an obstacle to its success, and require frequent explanation, notwithstanding that the second clause fully expressed the true purpose. The omission of the name in articles of incorporation is fatal.³ This is especially so where a statute requires the name of a corporation to be stated in its articles.⁴ As a general rule a corporation may adopt any name it desires,⁵ subject, however, to the qualification that an existing body may have a property right in its name and cannot be deprived thereof.⁶ A limitation upon the right to select a name for certain classes

¹ *Fort Pitt Bldg. & Loan Assn. v. Model, etc., Assn.*, 159 Pa. St. 308, 28 Atl. 215.

² *Ceredo First Nat. Bank v. Huntington Distilling Co.*, 41 W. Va. 530, 23 S. E. 792, 56 A. S. R. 878.

³ *Piper v. Rhodes*, 30 Ind. 309; *State v. McGrath*, 92 Mo. 355, 5 S. W. 29; *Investor Pub. Co. v. Dobinson*, 72 Fed. 603.

⁴ See California Civil Code, sec. 290, subd. 1.

⁵ *Ogden Packing, etc., Co. v. Wyatt*, 59 Utah 581, 204 Pac. 978, 22 A. L. R. 359.

⁶ *Supreme Lodge Knights, etc., v. Improved Order of Knights, etc.*, 113 Mich. 133, 71 N. W. 470, 38 L. R. A. 658.

of business corporations is sometimes found in statutes.⁷ In some states the general form of the name is prescribed; in some, for instance, it must begin with "the" and end with "corporation," "company," "association," or "society." A corporation cannot select a name which is then in use by some other person or persons, and, after recording its articles, insist that such person or persons must abandon the use of the name they have previously selected under which they are operating.⁸

Aside from the common-law exclusive right to a trade name, and the inhibition against the adoption of a name identical with that of any other corporation created in the same state, or so similar thereto as to deceive the public, the selection of a name is left entirely to the volition of the incorporators. The safe course, where there is any uncertainty as to a conflict, would be to communicate the proposed name to the secretary of state, or other official having charge of articles which have been filed, accompanied with an inquiry as to whether there would be a conflict, for he is not empowered to file articles which disclose such conflict. In some states provision is made by law for the issuance of a certificate of leave to use a particular name upon payment of a small fee.

The grounds upon which the courts afford relief against the infringement of a corporate name are the injury to the party aggrieved, and the imposition upon the public by causing them to believe that the goods or business of one man or firm is the property or the product of another. The existence of these consequences does not necessarily depend upon the question whether a fraudulent or an evil intent exists.⁹ The courts interfere in such cases, not on the ground that the state may not affix to the entities it creates such corporate names as it may elect, but in order to prevent fraud, actual or constructive.¹⁰ A court will enjoin the

⁷ See, for instance, Cal. Civil Code, § 290½, "Trust Companies."

⁸ *Grand Lodge A. O. U. W. v. Graham*, 96 Ia. 592, 65 N. W. 837, 31 L. R. A. 133.

⁹ *Holmes, etc., v. Holmes, etc., Co.*, 37 Conn. 278, 9 A. R. 324. See, also, *Drummond Tobacco Co. v. Randle*, 114 Ill. 412, 2 N. E. 536; *Newby v. Oregon Centr. Ry. Co.*, Deady 609, 616.

¹⁰ *Chas. S. Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462, 39 N. E. 490, 43 A. S. R. 769, 27 L. R. A. 42.

continued use of a name having such a tendency to mislead.¹¹ It is also generally held that the use of the name of a defunct corporation will be enjoined at the instance of a party whose rights therein are infringed thereby.¹² Notwithstanding the general principles of laches are not strictly applied in this country to suits for equitable relief against the unfair use of trade-marks and trade names, a corporation may by laches lose its right to equitable protection against the unfair use of its corporate name.¹³

§ 88. Use of Family Name as Part of Corporate Name.—

It is now settled beyond controversy that a family surname is incapable of exclusive appropriation in trade. The right of every man to use his own name in his business was declared in the law before the modern doctrine of unfair trade competition had arisen. It is part of the law of trade-mark. The subject may therefore be properly approached from that side. If, however, the name has previously become well known in trade, the second comer uses it subject to three important restrictions: (1) He may not affirmatively do anything to cause the public to believe that his article is made by the first manufacturer. (2) He must exercise reasonable care to prevent the public from so believing. (3) He must exercise reasonable care to prevent the public from believing that he is the successor in business of the first manufacturer. This duty to warn, however, must not be pressed so far as to make it impracticable for the second comer to use his name in trade. Otherwise we destroy under the law of unfair trade competition the very right which we have saved under the law of trade-mark.¹⁴ There may be found many cases which say, in substance, that a man cannot be deprived of the right to use his name in a lawful business by reason of the fact that the same

¹¹ *Dodge Stationery Co. v. Dodge*, 145 Cal. 380, 78 Pac. 879; *Holmes v. Holmes B. & A. Mfg. Co.*, 37 Conn. 278, 9 A. R. 324; *Chas. S. Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462, 39 N. E. 490, 43 A. S. R. 769, 27 L. R. A. 42.

¹² *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S. 554, 28 S. Ct. 350, 52 L. Ed. 616.

¹³ *Grand Lodge A. O. U. W. v. Graham*, 96 Ia. 592, 65 N. W. 837, 31 L. R. A. 133.

¹⁴ *Stix, Baer & Fuller Dry Goods Co. v. American Piano Co.*, 211 Fed. 271, 274, 127 C. C. A. 639.

name has become a trade name owned by another, and this is undoubtedly true, but this does not mean that it may be used at all times or on all surfaces or in all possible ways; in a word, it does not mean that the use may not be subjected to such conditions as are adequate to protect the public. It does mean, of course, that the right to use a proper name is not to be interfered with except so far as it may be necessary to accomplish the purposes mentioned.¹⁵ The right of a person to use his family name is regarded as a natural right and he may put it on his own goods, notwithstanding another person of the same name may, in that name, manufacture and sell goods of the same kind.¹⁶ The right, however, of a person to use his own name in business notwithstanding the prior use of the name by others in a similar business does not extend to a corporation of which he is a promoter and member.¹⁷

The jurisdiction of courts of equity to prevent injury from infringement of trade names has been liberally exercised and applied in all circumstances whenever it appeared that the name was an established distinctive, and valuable adjunct to an undertaking, whether used to distinguish manufactured articles, a place of business, or a corporation, commercial, or one formed not for pecuniary gain. All that is required to bring into activity the injunctive powers of the court is to inform it that the complainant's trade is in danger of harm from the use of its name by the defendant in such a way as is calculated to deceive the public into the belief that the defendant's affairs, in the respect complained of, are those of the complainant.¹⁸

¹⁵ *J. I. Case Plow Works v. J. I. Case Threshing Mach. Co.*, 162 Wis. 185, 155 N. W. 128.

¹⁶ *Wood v. Wood*, 78 Ore. 181, 151 Pac. 969, A. C. 1918A 226, L. R. A. 1916C 251; *Rogers v. Rogers*, 53 Conn. 121, 1 Atl. 807, 5 Atl. 675, 55 A. R. 78; *Sheffield King Milling Co. v. Sheffield Mill, etc., Co.*, 105 Minn. 315, 117 N. W. 447, 127 A. S. R. 574.

¹⁷ *Chas. S. Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462, 39 N. E. 490, 43 A. S. R. 769, 27 A. L. R. 42.

¹⁸ *Cape May Yacht Club v. Cape May Yacht & Country Club*, 81 N. J. Eq. 454, 86 Atl. 972.

§ 89. Certificate of Authority to Use Corporate Name.

STATE OF—DEPARTMENT OF STATE.

I,, Secretary of State of the State of, do hereby certify that the name is not the corporate name of any corporation existing under the laws of the State of, and that said name does not so closely resemble the name of any existing corporation as will tend to deceive.

In Witness Whereof, I have hereunto set my hand and
affixed the Great Seal of the State of,
this day of, A. D. 19.....

.....

Secretary of State.

A license to form a corporation under a certain name issued by the secretary of state gives such corporation the right to that name as against an already existing corporation having a different name which has passed a resolution and given notices for a meeting to vote on a change of its name to that selected by the new corporation, at least where its promoters did not know at the time of their license of the proposed change. And the secretary of state cannot revoke a license to form a corporation under a certain name merely because another corporation before the license was issued had called a meeting to vote on the question of adopting such name instead of that which it then had.¹⁹

¹⁹ Illinois Watch Case Co. v. Pearson, 140 Ill. 423, 31 N. E. 400, 16 L. R. A. 429.

CHAPTER XII.

THE CORPORATE PURPOSES.

- § 90. Corporate Purpose.
- § 91. Saving Clause.
- § 92. General Object Clauses.
- § 93. Purposes of Nonprofit Corporations.
- § 94. Purposes of Certain Classes of Corporations.

§ 90. **Corporate Purpose.**—Private corporations may, in general, be formed for any purpose for which individuals may lawfully associate themselves.¹ The purposes must be stated in the articles of incorporation. It is not sufficient that the name selected clearly indicates the nature of the business to be transacted.² The extent of the powers, not only of the board of directors but of the corporation itself, must frequently be determined by reference to the clause in the articles expressing the purposes, in connection with a consideration of the general character of the corporation, or class to which it belongs. It is well to consider in this connection that the enumeration of certain powers in articles excludes all others.³ Nevertheless, those which are necessarily implied are as much contained and granted as those which are expressed, the general rule being that the enumeration of powers in the charter or articles confers those and such others as are fairly implied, but none that are not included upon a fair and reasonable construction.⁴

Where a corporation claims the right to exist for a certain purpose, it must show that it was organized under a statute

¹ Cal. Civil Code, § 286.

² State ex rel. Collings v. Beck, 81 Ind. 500; State v. Central Ohio Mutual Relief Association, 29 Ohio St. 399; In re Crown Bank, L. R. 44 Ch. Div. (Eng.) 634.

³ Calumet, etc., Canal, etc., Co. v. Conkling, 273 Ill. 318, 112 N. E. 982, L. R. A. 1917B 814; State v. Missouri Athletic Club, 261 Mo. 576, 170 S. W. 904, A. C. 1916D 931, L. R. A. 1915C 876.

⁴ Vandall v. South S. F. Dock Co., 40 Cal. 83; Northside Ry. Co. v. Worthington, 88 Tex. 562, 30 S. W. 1055, 53 A. S. R. 778; Sylvester Watts Smyth Realty Co. v. American Surety Co., 292 Mo. 423, 238 S. W. 494; State v. St. Louis First Nat. Bank, 297 Mo. 397, 249 S. W. 619, 30 A. L. R. 918.

authorizing the creation of a corporation for that particular purpose.⁵ Therefore, under a statute authorizing the formation of corporations for certain designated purposes, the general words "or for any lawful business or purpose whatever, except," etc., extend only to things of a nature kindred to those specifically mentioned,⁶ and a statute purporting to authorize the formation of corporations for certain specific purposes, set out in separate subdivisions, some of which included several purposes, and "for any other purposes intended for mutual profit or benefit not herein otherwise specially provided for," has been held not to sanction the formation of a corporation for two or more purposes enumerated in the different subdivisions where the statute also declared that the charter must state the purpose for which the corporation was formed.⁷

§ 91. Saving Clause.

It is a common practice, however, to insert in the articles some such comprehensive "saving clause" as the following:

Saving Clause in Articles.

To do each and every thing necessary, suitable, or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive to or expedient for the protection or benefit of this corporation.

Great care must be taken lest there be enumerated some purpose which will bring the corporation into some one of those classes, other than that intended, as to which the legislature has made special regulations. So also should equal care be taken to set out such purposes as will bring it within the operation of any particular statutory provision desired. To this end a study of the details of such provisions with respect even to all other classes of corporations should be made before this portion of the articles is prepared.

§ 92. General Object Clauses.

Purposes of a Trading Company.

That the purposes for which said corporation is formed are, the engaging in and carrying on of a general mercantile and commission business in

⁵ *Indiana Bond Co. v. Ogle*, 22 Ind. App. 593, 54 N. E. 407, 72 A. S. R. 326.

⁶ *State v. International Inv. Co.*, 88 Wis. 512, 60 N. W. 796, 43 A. S. R. 920.

⁷ *Ramsey v. Tod*, 95 Tex. 614, 69 S. W. 133, 93 A. S. R. 875.

the City of, State of, and elsewhere; the buying, selling, leasing and hiring of real estate in the State of and elsewhere; the purchasing, holding and selling of the stock of other corporations, and such other purposes as may be incidental to the engaging in and carrying on of such mercantile and commission business.

Purposes of a Dry Goods Company.

That the purpose for which it is formed is to purchase and acquire the good will, stock and business now carried on and conducted by the firm of John Doe & Co., and to carry on and conduct said business and to carry on a general wholesale and retail business in goods, wares and merchandise of all kinds and nature whatsoever useful and ornamental, and more particularly to carry on the business of importing and manufacturing, buying and selling dry goods, fancy goods, cloaks, suits, curtains, and goods, wares and merchandise appertaining and relating to the dry goods and fancy goods business, and to make, manufacture, buy and sell cloaks, suits, and other articles of wearing apparel, and to do and transact everything necessary, proper and beneficial in carrying out any of the foregoing named objects, and also to acquire, sell, lease, rent, hire and hypothecate real estate and to make assignments of leases and contracts and to transfer and assign leases and contracts when and where necessary and incident to said business.

Buying, Improving, Cultivating and Selling Farm Lands.

That said corporation is formed for the purpose of buying that certain farm known as the Fulton tract of land, situate near, in County, in the State of, and cultivating and improving the same, and conducting thereon the general business of farming, stock raising, growing and curing fruits, grapes and other products, making wine and selling such products; and, when sufficiently improved, that an adequate price can be obtained therefor, selling said farm in one body or in small subdivisions.

Comprehensive and Concise Purposes.

That the purposes for which said corporation is formed and framed are:

1. To purchase, own, improve, sell, lease and deal in real property of every description; to buy, sell, own, hold and deal in personal property of all kinds;
2. To purchase, own, sell and deal in shares of stocks, bonds, and obligations of public and private corporations;
3. To purchase, own, sell, operate and develop mines and mining claims and gold-bearing veins and lodes, and to carry on and conduct the mining and milling business in all its branches;
4. To lend money;
5. To buy, sell and deal in merchandise of all kinds;
6. To charter, construct, own, lease, and operate steam and other craft and vessels;

7. To do and perform all other acts or things necessary or incidental to purposes hereinabove set forth.

General Business, Comprehensive and Elaborate.

That the objects and purposes for which this corporation is formed are:

(a) The carrying on of a General Trading business in all its branches; also for receiving deposits of money and loaning the same; also for the purposes of purchasing, taking, owning and holding real and personal property, improving, selling, leasing and dealing in the same, and for the purposes of leasing and hiring all kinds of real and personal property from others within the United States, Mexico and the British possessions, or wheresoever else it may acquire such rights and possessions.

(b) Also for the purposes of building and constructing all kinds of public and private buildings and doing a general contracting and building business.

(c) Also for the purpose of buying and selling, taking, owning and holding and dealing in shares of stock in this and other corporations, bonds, mortgages, pledges, choses in action, judgments, rights of way, water works, water rights, easements, inventions, trade marks, patents, patent rights, licenses, privileges, oil, asphalt, gas, electric or other lines for the transmission of light or power.

(d) Also to sell, pledge, mortgage or hypothecate any of its properties for the purpose of securing any indebtedness it may contract and to make, execute and deliver all instruments in connection therewith and to do all such other acts and things as shall be necessary in the transaction of its business.

(e) Also to maintain and carry on a general real estate, commission and auctioneering business, to act as agent, trustee, broker, or in other capacities in the making and negotiating of loans upon real estate or personal property, stocks, bonds and other securities of all kinds.

(f) Also for the purpose of loaning money with or without security, and for taking all kinds of mortgages, pledges and securities of real or personal property to secure loans made by it; and to use all lawful means for the collection of money due it.

(g) Also for the purpose of carrying on and transacting any and all kinds of business in which natural persons may lawfully engage.

Purchase and Development of Oil Land and Other Business.

That the purposes for which it is formed are:

1. To buy and otherwise acquire, to hold and own, manage, operate, improve, develop and sell lands, mining claims, mineral rights, oil wells, and other real estate and interests and rights in and to any of said properties;

2. To engage in and carry on the business of drilling and exploring for oil, producing, refining, distilling, treating, manufacturing, piping, carrying, handling, storing, dealing in, buying and selling oils, petroleum, natural

gas, asphaltum, bitumen, bituminous rock, and other mineral and hydro-carbon substances, and products of all other substances; and for such purpose to buy and otherwise acquire, hold, own, manage, and operate refineries, pipe lines, tanks, manufactories, machinery, tank-cars and other works, property and appliances that may be incident or auxiliary to said business, or that may be deemed necessary or convenient by the board of directors;

3. Also to take and acquire by purchase, exchange, or other lawful modes, and to hold, own, sell and otherwise dispose of the capital stock and bonds of other corporations;

4. Also to establish agencies, offices, storage tanks and houses, and to sell articles and products manufactured by itself, or other persons or corporation, in and other states or territories of the United States of America, and in foreign countries.

Purchase, Development and Sale of Mineral Lands, Water Rights, and Other Business.

That the purposes for which it is formed are:

First.—To acquire in any part of the world by purchase, condemnation, exchange, location, appropriation, or in any other manner whatsoever, or in any manner whatever, to receive, own, hold, use, operate, lease, supply, mortgage, sell, or otherwise dispose of, in any part of the world, mines, mining property, ores, deposits of mineral, rock, earth, water, water rights, power, light, reservoirs, canals, flumes, ditches, pipes, tunnels, aqueducts, dams, sites, rights of way, or other easements, mills, smelters, or other machinery, sawmills, stores, hotels, boarding houses, vessels, tramways, or any other kind of property.

Second.—To contribute in any manner to the expense of promoting, constructing, improving or maintaining in any part of the world any works of any kind whatsoever, however owned, which, in the judgment of its board of directors for the time being, may be calculated, directly or indirectly, to advance the interests of the company; and to buy or otherwise acquire, hold, guarantee, pledge or contract with reference to, or otherwise dispose of, in any manner, the shares, bonds, obligations or other securities of this or of other corporations, or of individuals;

Third.—To promote, maintain, do, perform, execute, acquire, own, hold or dispose of each, all or anything incidental to, or necessary, convenient or proper, in the judgment of the board of directors for the time being, to carry out or perform any of the matters, things or purposes aforesaid, or incidental thereto, or connected therewith, or to exercise or acquire any rights, franchises or privileges which may be deemed necessary, requisite, useful, convenient, incidental or auxiliary to any of the purposes, objects or things herein or that in the judgment of its board of directors for the time being may tend to advance the interests of the company, directly or indirectly;

Fourth.—To do such business of whatever nature, or in such places, in

any part of the world, as the corporation's board of directors for the time being, may, from time to time, by by-laws, resolutions, or otherwise, determine.

To Purchase, Lease, Operate, etc., Street Railways.

That the purposes for which it is formed are as follows, namely: To purchase, acquire, construct, lease, hire, rent, own, control, operate and maintain street railroads in, along and upon the streets, avenues, alleys, highways, roads and lands within the corporate limits of the City of, in the State of, and the County of, in the State of, and to let, demise and lease the same to persons or corporations.

The kind of railroads to be purchased, acquired, constructed, leased, hired, rented, owned, operated and maintained by said corporation are double and single track street railroads, with all necessary switches, side tracks, turn-outs, turn-tables, and terminal accommodations; and said railroads are to be operated by animals, or by wire cables and stationary engines, or by locomotive engines, or by electricity, or by all or any and every such means, or by such other means as science or discovery or invention may provide and the law sanction.

The place from and to which said railroad and branches are to run are within the City of, in the State of and the County of, in the State of

To Purchase, Take Over and Operate Properties of Electric, Gas and Railway Companies, Etc.

That the purposes for which it is formed are quasi-public, to wit: To acquire by purchase, or otherwise, all of the property, rights, privileges and franchises, of every kind and nature whatsoever, of the Excelsior Electric Power, Gas and Railway Company, a corporation organized and existing under the laws of the State of, and of the Windom Electric Power and Light Company, a corporation organized and existing under the laws of the State of; and thereafter to own all of said property, rights, privileges and franchises, and to use and enjoy the same according to the nature thereof, respectively:

To construct canals on the banks of the Swift River, near the City of, in County, to be used for water power, manufacturing, mechanical, irrigation, mining and domestic purposes, and all such other beneficial uses and purposes, as the said canals may be useful for, at any point in County, or elsewhere, in the State of to which the water of said canals may be taken or conducted, and, to aid and further said purposes, to acquire by purchase or otherwise, all lands, waters, water rights and franchises, and all the dams and canals and other works and improvements, and all contracts for labor, as well as all other properties, or things in action, which may be of use or benefit in carrying out the aforementioned purposes;

To acquire, hold, manage and operate canals, reservoirs, dams, ditches, flumes, aqueducts, pipes, water and water rights, electric lines, machinery,

factories and other property for the purpose of generating and transmitting electricity, electric energy and electric light, heat, power and other uses;

To acquire, hold, manage and operate buildings, tanks, machinery, pipes and pipe lines, and any and all other appliances, for manufacturing, producing and distributing gas, and any and all other illuminant products, for light, heat, power, and any and all other beneficial uses and purposes to which they may be applied;

To supply such power to mines, quarries, railroads, street railroads, tramways, mills and factories; to supply such light, heat, gas and illuminant products, to mines, quarries, mills, factories, incorporated cities, cities and counties, villages and towns, and to the inhabitants thereof, or to any other useful purpose;

To acquire, maintain and operate street railroads in the City of, County of, over, along and upon certain streets in said city, as set out in ordinances adopted by the board of trustees of said city; and also to acquire, maintain and operate other street railroads in said City of and elsewhere, for which franchises may be obtained by this corporation, either by direct grant or by purchase or otherwise;

To acquire by purchase, or otherwise, from any person, firm or corporation, property, rights, privileges and franchises that may be deemed of value to this corporation in carrying out or in connection with, any or all of the objects for which this corporation is formed, as hereinbefore set forth;

To acquire and own any and all real estate that may be necessary or useful in carrying out the objects for which this corporation is formed, as hereinbefore set forth;

To incur indebtedness in such amount as may be deemed necessary or proper; to evidence such indebtedness by the bonds or other written obligations of this corporation; and to secure the payment of such indebtedness by mortgage, deed of trust, or other form of incumbrance of and upon all or any part of the property, rights, privileges and franchises of this corporation, whether acquired at the time of making such incumbrance, or thereafter to be acquired;

To sell or lease any of the property that may be acquired by the corporation, and to lease similar property from others; to make trade or traffic arrangements with other persons, firms or corporations for any purpose that may be desirable or profitable to this corporation;

To buy and sell shares of stock of any corporation engaged in business similar to that of this corporation, and to buy and sell the mortgage bonds of any such corporation engaged in similar business.

Purpose of a Cooperative Merchants' Association.

To consider and secure such legislation as will be of benefit to the community.

To urge and assist the proper authorities in the enforcement of all just laws and regulations governing municipalities without fear or favor.

To advocate the repavement of streets, new sewers, schoolhouses, parks and children's playgrounds, and the adoption of such other measures as will add to the comfort of residents and the beautification and attractiveness of the City of To originate and secure the adoption of such measures as will attract visitors to this city and state, and add to their safety and convenience. To encourage the development of the resources of the city and state, and to induce and co-operate in the location of new mercantile and manufacturing enterprises. To give reliable information to the members as to the financial standing and reliability of patrons applying for credit. To assist employers in securing reliable employees, and to protect members against frauds of every description. To secure for members the lowest advertising rates, and to advise them as to the circulation and reliability of newspapers and advertising propositions. To aid members and the mercantile interests of the city in general in the promotion of trade and recommending such regulations as may be deemed expedient in furthering their several interests. To furnish members with legal advice on matters pertaining to their business interests.

Purposes of a Sporting or Gun Club.

To promote and encourage all kinds of field and athletic sports; to promote and encourage the sport, pleasure and recreation of its members; to promote and encourage the proper and reasonable protection of all kinds of wild game and fish; to arrange, promote and conduct shooting contests; to acquire and maintain game preserves for the use, benefit and enjoyment of its members; to secure by lease, purchase or otherwise the right and privilege to hunt, shoot and fish on such game preserves; to hold, purchase and acquire, buy and sell, lease, mortgage and hypothecate real and personal property; to erect buildings or other structures necessary and proper for the carrying out of the purposes before mentioned; to borrow and loan money and to do any and all other things whatsoever which may be requisite, necessary and proper in and about the carrying out of the purposes and objects for which this corporation is formed.

Purposes of the United States Steel Corporation.

To manufacture iron, steel, manganese, coke, copper, lumber and other materials, and all or any articles consisting, or partly consisting of iron, steel, copper, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron, manganese, stone or other ores or oil and any wood lands or other lands for any purpose of the company.

To mine or otherwise to extract or remove, coal, ores, stone, and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber and other materials and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars

and other equipment, railroads, docks, elevators, slips, water works, gas works, and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation, and to sell the same, or otherwise to dispose thereof, or to maintain and operate the same, except that the company shall not maintain or operate any railroad or canal in the state of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce and to sell, assign or otherwise to dispose of, any trade marks, trade names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise to dispose thereof, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade marks, patents, licenses, processes and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction, or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the state of New Jersey.

To acquire by purchase, subscription or otherwise, and to hold or to dispose of, stocks, bonds or any other obligations of any corporation formed for, or then or theretofore engaged in or pursuing, any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or obligations of any such corporation.

To hold for investment, or otherwise to use, sell or dispose of, any stocks, bonds or other obligations of any such other corporations; to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds or other obligations or to any acts or things designed for any such purpose; and while owner of any such stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereof.

The business or purpose of the company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other states, and in the territories, and in foreign countries, and may have one office, or more than one office, and keep the books of the company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property, either in or out of the State of New Jersey.

Without in particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have the power to issue bonds and other obligations in payment for

property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends, or bonds, or contracts, or other obligations; to make and perform contracts of any kind and description and in carrying on its business, or for the purpose of furthering or attaining any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a copartnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

Purposes of Mining Company.

To do all kinds of mining, refining, transportation, mercantile, manufacturing, and trading business.

To buy, sell, hire, lease, or otherwise acquire lands containing, or believed to contain, petroleum, natural gas, oil springs, or mineral deposits; to purchase, sell, hire, lease, or otherwise acquire land, mines, mineral claims, water rights and franchises, mill sites and timber lands.

To carry on the business of producing, refining, storing, supplying, buying, selling, and distributing petroleum and petroleum products and by-products of all classes and descriptions and minerals; to carry on the business of searching for, prospecting, preparing, producing, piping, storing, and transporting water, gas, petroleum, and other oils, and their products and by-products, and minerals.

To construct, build, sell, buy, operate, hire, and otherwise acquire, lease, and maintain oil wells, refineries, buildings, machinery, plants, stores, and warehouses.

To lay down, construct, acquire, maintain, purchase, sell, operate, own, hire, and lease (for transportation of petroleum oil and its products, natural gas and water) pipe lines, tanks, pump stations, connections, fixtures, storage houses, and such machinery, apparatus, and devices as may be necessary to operate such pipes and pipe lines between various points; to transport petroleum oil and its products, natural gas and water for hire, as a common carrier or otherwise, through said pipe lines; also wherever permitted by law, to have the right and power to enter upon public and private rights of way, easements, properties of all persons and corporations, and to have the right to lay pipes and pipe lines across and under any public road, railroad, right of way, street railroad, canal, or stream; to lay its pipes and pipe lines across and under any street or alley in any incorporated city or town, with the consent and under the direction of the proper authorities of such city or town.

To transport goods and merchandise by land or water in any manner; to construct, purchase, sell, lease, hire, own, and operate all kinds of vessels, both for inland and deep water navigation, barges, and any and every kind of vessel designed for the transportation upon water of goods, wares, and merchandise, and to operate the same as a common carrier for hire or otherwise.

To buy, sell, lease, improve, and mortgage lands.

To build, buy, sell, hire, lease, and otherwise acquire houses, structures, vessels, cars, wharves, docks and piers, and franchises to maintain the same.

To carry on its business and have offices and agencies therefor in all parts of the world.

To erect, maintain, operate, own, hire, lease, and otherwise acquire mills, works, laboratories, workshops, and dwelling houses for workmen and others.

To search for, prospect, examine, refine, smelt, produce, crush, concentrate, manipulate, and treat gold, silver, lead, and minerals of every class and description.

To manufacture, buy, sell, import, export, hire, and lease and generally deal in machinery, pumps, drills, implements, and conveniences suitable for use in connection with the oil or mining business.

To own and operate experimental plants for the determination of any and every kind of industrial process.

To acquire, own, operate, improve, sell, hire, lease, and mortgage real property of any and every kind, including mines, mineral lands, timber lands, transportation systems, and improvements upon real estate of every kind and nature.

To manufacture, buy, sell, deal in, export, and import any and every kind or description of material, merchandise, products, or other property, and to act as purchasing and selling agents therefor.

To obtain, own, lease, use, vend, and sell, and in any and every way deal in and with patents, patent rights, and interests therein, and inventions of every kind, including trade marks.

To construct, acquire, maintain, and operate plants and lines or conduits for the generation and transmission of gas or electricity, and to sell to others or use, as it may see fit, such products when so generated.

To own, locate, obtain, sell, develop, and maintain water, water rights, and franchises of every kind, including the generation and sale, or lease, of power derived in whole or in part therefrom.

To carry on the business of mining and milling in all their branches.

To establish, become interested in, buy, sell, conduct, hire, lease, or maintain stores, warehouses, docks, wharves, piers, or landings, and boarding or dwelling houses of every kind and description.

To establish and maintain branches or agencies.

To borrow money on corporate obligations, with or without security, including the right to issue bonds or debentures, and, where necessary, to secure the payment of the same by mortgage, deed of trust, or pledge of the property of this corporation.

To loan or advance money to individuals, firms, or corporations on open account, or on personal or corporate notes of such individuals, firms, or corporations, with or without security.

To buy, own, hold, or otherwise acquire, pledge, sell, or otherwise dispose of shares of the capital stock or bonds of this corporation, and also

of other corporations, including the right to deal in bonds or obligations of any municipality, state, or government.

To guarantee or secure the payment of bonds or stock issued by any other corporation.

To enter into contracts of all kinds with firms, individuals, corporations, and civil, municipal, state, or governmental authorities, whenever the same shall be authorized by the directors of this corporation, or by the by-laws of this company.

To act as fully for any other corporation, firm, or individual as any individual could do.

To sell, lease, exchange, surrender, or otherwise deal with the whole of the undertaking and property and rights of this corporation, or any part thereof, for such consideration as the board of directors may think fit, and in particular for any shares (whether credited as partly or fully paid up, or otherwise), debentures or securities of any other company, and to divide such part or parts, as may be determined by the board of directors, of the purchase moneys, whether in cash, shares or other equivalent, which may at any time be received by this corporation on a sale of, or other dealing with the whole or part of its property, estate, effects, and rights of the corporation amongst its stockholders by way of dividend or bonus in proportion to their shares, or otherwise to deal with the same as the board of directors may determine; provided, however, that such sale, lease, exchange, surrender, or other disposition of the property and rights of this corporation, shall be ratified by the vote or written assent of three-fourths of all the issued stock.

The objects and powers specified in this article shall, except where otherwise herein expressed, be in no wise limited or restricted by reference to, or inference from, the terms of any other clause or paragraph in these Articles of Incorporation, but each shall be deemed to be separate objects or powers, and said objects or powers, and each of them, shall be deemed to be in furtherance of, and not in limitation of the general powers conferred by the laws of the state.

§ 93. Purposes of Non-Profit Corporations.—The purposes of non-profit corporations are governed by the same laws as those of corporations organized for profit.

Mutual Aid, Etc.

That the purposes for which it is formed are mutual, benevolent purposes and providing for funeral expenses and for sick benefits of the members of the corporation and association and for those members in distress financially.

Sociability, Benevolent Aid, Etc.

That the purposes for which it is formed are to promote sociability and friendship amongst its members, to manage and conduct entertainments, excursions and social meetings of its members, and for such purposes to

hold, lease or purchase real property; and to enter into all contracts necessary in conducting its affairs, and to render such benevolent aid and comfort to its members as may be provided by its by-laws; also to receive, hold and divide amongst its members the cemetery or burying lots of said society.

Chamber of Commerce.

The object and purpose of this organization shall be the upbuilding of the city of Little Rock, Argenta, Pulaski County and the State of Arkansas, encouraging and assisting in public improvements of all kinds therein, including streets, highways, sewers, public buildings, and any and all things which are for the public good; locating schools and colleges, libraries, and all things which look toward higher and better educational advantages; locating and developing and assisting in the location and development therein of manufactures and other industries; buying, owning, developing and selling property, real and personal, borrowing money and issuing bonds and other evidences of indebtedness, and executing mortgages or deeds of trust to secure same; conducting a merchants' association, which will bring merchants and parties engaged in trade in closer association and work for the mutual advantage and protection of the same, conducting a board of trade with all the necessary adjuncts, conducting a real estate exchange which shall unite under rules of business and justice the business of buying, selling and exchanging real estate and for the conduct and control of brokers, agents and others engaged in that line of business; for organizing and conducting any other bureau or bureaus, exchanges, which the board of governors may decide shall be beneficial or necessary in the building up of said cities and State, and for the best interest thereof and of this organization; shall have full power to do any and all things deemed necessary in carrying on any and all of the above objects; to foster and promote the commercial, industrial, physical and moral development of the cities of Little Rock, Argenta and vicinity.

Promulgation of Principles of Political Party.

(a) To promulgate the principles and promote the welfare and success of the political party known as the party in the State of

(b) To organize and institute branches of said organization and grant charters and dispensations of the same.

(c) To purchase, hold, lease, and hire real estate and personal property and to sell and dispose of the same; to build, erect, maintain, lease and hire halls, buildings and places for meetings and generally to do such other things as may be conducive to the purposes aforesaid.

§ 94. Purposes of Certain Classes of Corporations.—In many states special restrictions are placed upon or unusual privileges granted to corporations belonging to certain classes. In order, therefore, that the incorporators may bring the corporation

within any desired class, its purposes must be outlined substantially in the words of the particular statute dealing with such a class of corporations. A few examples follow:

Purposes of Assessment Insurance Corporation.

That the purpose for which this corporation is formed is the carrying on of the business of mutual insurance upon the assessment plan.

Purposes of Mutual Benefit and Life Association.

That the purpose for which this corporation is formed is the payment to the nominee of any member a sum, upon the death of the member, raised by an assessment not exceeding three dollars for each member of the association.

Purposes of Mutual Life, etc., Insurance Corporation.

That the purposes for which this corporation is formed are:

Mutual insurance on the lives of persons;

Mutual insurance on the health of persons;

Mutual insurance against accidents to persons for life;

Mutual insurance against accidents to persons for any stated period of time.

The purchase and sale of annuities.

Purposes of Fire Prevention Corporation.

That the purposes for which this corporation is organized are the discovering and preventing of fires and the saving of property and human life from conflagration.

Purposes of a Homestead Corporation.

That the purposes for which this corporation is organized are the acquiring of lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes.

Purposes of a Savings and Loan Corporation.

That the purposes for which this corporation is formed are the loaning of the funds of its members, stockholders, and depositors, receiving deposits of money, loaning, investing, and collecting the same, with interest, and the repayment of depositors with or without interest.

Purposes of Cemetery Corporation.

That the purposes for which this corporation is formed are the establishment and maintenance of cemeteries, and the purchase, or the receipt by donation or devise of land in the County of, and in adjoining counties for such purpose, such lands to be held and occupied exclusively as a cemetery for the burial of the dead.

Purposes of an Agricultural Fair Corporation.

That the purposes for which this corporation is formed are the purchasing, holding, and leasing, selling, or otherwise disposing of real estate to be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising, and general domestic industry.

Purpose of Corporation for the Prevention of Cruelty.

That the purpose for which this corporation is formed is the prevention of cruelty to animals (or children).

CHAPTER XIII.

PROCEDURE TO INCORPORATE.

§ 95. Steps in the Formation of a Corporation.

§ 96. Filing or Recording Articles.

§ 95. Steps in the Formation of a Corporation.—The first step in the formation of a corporation is the preparation of what is called in most states articles of incorporation. This instrument is in effect a statement of facts with respect to the proposed corporation which, if properly drawn, establishes to the satisfaction of the official to whom it must be presented, usually the secretary of state, the fact that this body of men is entitled under the general laws to incorporate its enterprise, and, as a record in his office establishes the limits within which it may operate as a corporation. In other words, it is in the nature of an ordinary contractual acceptance, on the part of the promoters, of the offer of the state in its general laws to grant them, on certain conditions, a right to so act. The proper official, having checked up the details of the articles and found them sufficient, issues his official approval in the form of a certificate of incorporation; after which, the requisite fees having been paid, the corporation may proceed to act as such, complying at all times, of course, with the statutory requirements and the limitations of its own articles covering its conduct as a going concern.

§ 96. Filing or Recording Articles. — The articles of incorporation must, as a rule, be filed with some public office, and this is generally a condition precedent to the corporate existence.¹ There are variations as to the place of filing the paper showing the organization of a corporation. According to some statutes, it must be filed in the office of the secretary of state; according to others, it must be filed in the office of the clerk of the county in which the corporation is to have its principal place of business, and then the certificate bearing the indorsement of the clerk, or

¹ *Midland Bank v. Harris*, 114 Ark. 344, 170 S. W. 67, A. C. 1916B 1255; *Randle v. Winona Coal Co.*, 206 Ala. 254, 89 So. 790, 19 A. L. R. 118; *Frawley v. Tenaflly Transp. Co.*, 95 N. J. L. 405, 113 Atl. 242, 22 A. L. R. 369.

a duplicate of the certificate or a certified copy thereof, shall be filed in the office of the secretary of state; according to others, the certificate must be filed with the county court and a duplicate with the secretary of state; according to other statutes, the certificates must be filed in the office of the secretary of state and a duplicate in the office of the county clerk of the county where operations of the company are carried on; other statutes require a report to the secretary of state to show certain facts relating to the organization of the corporation, and require the secretary of state, upon its filing to issue a certificate of organization making a part thereof a copy of the papers filed with him, which must be recorded in the office of the recorder of deeds of the county where the principal place of business is located.

Where a statute requires that articles of incorporation shall be filed with the county clerk of the county where the proposed corporation is to have its principal place of business, and shall also be filed with an indorsement of the county clerk in the office of the secretary of state, strict compliance with the requirements of the statute is essential to create a corporation *de jure*.² While to the proposition that a corporation *de jure* is prevented by the failure to file the articles of incorporation there is no dissent, the cases are not in agreement as to whether a corporation *de facto* may be created despite the failure to file the necessary paper. Some cases hold that the corporation is not prevented from becoming a corporation *de facto* by the failure to file the required paper.³ Without, in every instance, making clear whether a *de facto* corporation was meant, many cases take the broad view that the failure to file the required paper prevents the organization from becoming a corporation.⁴ This doctrine has been held especially applicable where the stockholders are seeking to avoid liability as partners on the theory that a corporation was formed.⁵

² *Midland Bank v. Harris*, 114 Ark. 344, 170 S. W. 67, A. C. 1916B, 1255.

³ *Wesco Supply Co. v. Smith*, 134 Ark. 23, 203 S. W. 6; *Claremont College v. Riddle*, 165 N. C. 211, 81 S. E. 283; *Grant Chrome Co. v. Marks*, 92 Ore. 443, 181 Pac. 345.

⁴ *Elgin Nat. Watch Co. v. Loveland*, 132 Fed. 41, 133 Fed. 1021, 66 C. C. A. 680; *John L. Whiting & Sons Co. v. Barton*, 204 Mass. 169, 90 N. E. 528; *Bank of De Soto v. Reed*, 50 Tex. Civ. App. 102, 109 S. W. 256.

⁵ *Bigelow v. Gregory*, 73 Ill. 197; *Kaiser v Lawrence Sav. Bank*, 56 Ia. 104, 8 N. W. 772, 41 A. R. 85.

In other cases, in which a stockholder was defending a suit brought against him as a partner, the failure to file the required certificate is held to prevent the corporation from coming into existence.⁶

⁶ *Hurt v. Salisbury*, 55 Mo. 310.

CHAPTER XIV.

ORGANIZATION OF A CORPORATION.

- § 97. Necessity of Organization.
- § 98. Corporations de Jure and Corporations de Facto.
- § 99. Essentials of Organization.
- § 100. Organization Meeting and Commencement of Business.
- § 101. Time of Organization.
- § 102. Place of Organization Meetings.
- § 103. Methods of Selecting Directors.
- § 104. Organization With "Dummy Directors."
- § 105. Organization of Corporation and Minutes of Its Meetings—Model Set of Minutes.

§ 97. **Necessity of Organization.**—By organization of a corporation something different is meant than the mere filing and recording of articles and procuration of a certificate from the secretary of the state. When these steps have been taken an entity called a corporation exists merely in the abstract. To entitle this entity to public recognition, and to standing in the courts, as a legal person, its components, that is, its stockholders, must form a working body of themselves. If the directors named in the articles for the first year never meet or act, no stock is ever issued, no stockholders, or persons who have signed the articles ever meet, or pretend to meet, as a corporate body; if no persons are ever appointed as officers, no records are ever kept, there is no such corporate existence as will authorize the exercise of any of the powers of a corporation. And by the statutes of several states, it is required that something be done in addition to organizing. Business must be commenced in some way within a given period, usually one year. The term "organized" or organization means generally the election of officers, the subscription and payment of the capital stock, the adoption of by-laws, and such other steps as are necessary to endow the legal entity with the capacity to transact the legitimate business for which it was created. Therefore, where nothing more was done than to file a charter in the proper office, naming certain persons as the directors of the corporation for the first year, but no capital stock was

subscribed or paid, and no other steps were taken to complete the organization, and there was an entire failure on the part of the incorporators to comply with the provisions of the law for the government of corporations, it was held that there was no such organization as would enable the corporation to do business.¹

§ 98. Corporations de Jure and Corporations de Facto.—

It is at this point that a clear understanding should be had of the common distinction between a corporation *de jure* and a corporation *de facto*. A corporation *de jure* is one which has complied with all of the statutory requirements up to the point where the certificate of incorporation has been received from the secretary of state; that is, one which is "duly incorporated." A corporation *de facto* is an association of persons which, whether duly incorporated or not, is exercising under color of due incorporation, in good faith, all of the functions usually exercised by a corporation, one which, in other words, has organized and commenced to transact business.

It is a generally recognized principle that, as between the corporation and other private persons, that is, collaterally, no issue can be raised as to the due incorporation of a *de facto* corporation; but that errors or omissions in the process of incorporation may be taken advantage of only by the state in a suit for that purpose.² But, in order that the corporation may avail itself of this immunity, it must first show that it is a corporation *de facto*, that is, that it has organized and commenced business.³ A *de facto* corporation is under the protection of the same law, and governed by the same legal principles, as a corporation *de jure*, so long as the state acquiesces in its existence and exercise of corporate

¹ Walton v. Oliver, 49 Kan. 107, 30 Pac. 172, 33 A. S. R. 355.

² Dickey v. Southwestern Surety Ins. Co., 119 Ark. 12, 173 S. W. 398, A. C. 1917B 634; Swofford Bros. Drygoods Co. v. Owen, 37 Okla. 616, 133 Pac. 193, L. R. A. 1916C 189; Madera Ry. Co. v. Raymond Granite Co., 3 Cal. App. 668, 87 Pac. 27.

³ Martin v. Deetz, 102 Cal. 55, 36 Pac. 368, 41 A. S. R. 151; Wall v. Mines, 130 Cal. 27, 62 Pac. 386; Western Union Tel. Co. v. S. Ct., 15 Cal. App. 679, 683, 115 Pac. 1091; Barnes v. Board of Sup., 13 Cal. App. 760, 1110 Pac. 820; Reclamation Dist. v. McPhee, 13 Cal. App. 382, 109 Pac. 1106.

functions.⁴ Thus, even if there has been due incorporation, it is usually provided that the state may have the corporation dissolved where no organization has been effected and transaction of business commenced within the time and during the period required by the statutes of the state. It can thus be seen how vital is the necessity of organization, not only in order to perfect the powers conferred by due incorporation, but also to cure for practical purposes, any possible, and perhaps unnoticed, errors in the process of incorporation.

§ 99. Essentials of Organization.—That the organization may be said to be complete, it is necessary that there shall have been provided officers and agents of some sort authorized to carry on the business for which it was incorporated, and that some system shall have been established by means of which these officers and agents may be guided and restricted in the exercise of their duties, and the rights of the stockholders or members clearly defined and protected. The first named essential is provided by the selection of directors and the naming of the officers of the corporation. The second named essential is provided by the adoption of by-laws. In California a corporation is required to adopt by-laws within one month after filing its articles, but no penalty for failure so to do is provided.⁵ If a preliminary organization is effected in good faith by the filing of articles, the election of officers, and adoption of by-laws, the company becomes a corporation *de facto* even though the final organization is not completed within the time required by law.⁶

§ 100. Organization Meeting and Commencement of Business.—In some states, such as Delaware and New Jersey, the first meeting of a corporation must be called by a notice, signed by a majority of the incorporators, designating the time, place and purpose of the meeting, which notice must be published at least two weeks before the meeting in some newspaper of the county

⁴ *Owensboro Wagon Co. v. Bliss*, 132 Ala. 253, 31 So. 81, 90 A. S. R. 907; *Central of Georgia Ry. Co. v. Union Springs, etc., Co.*, 144 Ala. 639, 39 So. 473, 2 L. R. A. 144.

⁵ California Civil Code, sec. 301.

⁶ *Stockton & Linden Gravel Road Co. v. Stockton, etc., R. Co.*, 45 Cal. 680.

where the corporation is established; or the first meeting may be called without publication if two days' notice be personally served on all of the incorporators; or if all of the incorporators, in writing, waive notice and fix a time and place of meeting, no notice or publication is required. After the first meeting of incorporators has been held and the directors have been elected, the directors should meet and appoint officers for the ensuing year, provide for the issuance of capital stock, and transact such other business as may be necessary to complete the organization of the company. In Nevada, and a few other states, it is provided that where one or more of the commissioners or incorporators of any incorporation, shall have died before the corporation shall have been organized, pursuant to law, the survivor or survivors may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid is as effectual in law as if it had been effected by all the original commissioners or incorporators.

Statutes usually provide that if the corporation does not organize and commence the transaction of its business within a certain date after its incorporation, its corporate powers shall cease, and in such case, the corporation may be dissolved at the instance of any creditor, at the suit of the state on information of the attorney general.⁷

§ 101. Time of Organization.—In Massachusetts the entire organization, including the election of directors and the adoption of by-laws must be effected before incorporation, as a result of which the instrument filed is called articles of organization, instead of articles of incorporation. In Ohio, New Jersey, and Delaware, on the other hand, no permanent organization whatever is effected until after incorporation. In other states, part of the permanent organization is effected before, and part after, incorporation. In Illinois, Indiana, New York, Pennsylvania, California, and a few other states, the directors who are to serve for the first year must be selected before the articles are filed, and the by-laws adopted after the certificate has been issued. In New Hampshire, although the directors must be elected subsequently, the by-laws may be adopted either before or after incorporation.

⁷ *McKee v. Title Ins., etc., Co.*, 159 Cal. 206, 113 Pac. 140.

Unless the corporation is organized within any specified time from the date of its incorporation, it is frequently provided that the charter shall be void, or be regarded as revoked, or that the corporate powers shall cease.⁸

§ 102. Place of Organization Meetings.—It is mandatory that the organization meeting be held within the jurisdiction of the state under whose laws the corporation is created, and any attempt to hold the organization meeting outside of the jurisdiction of such state will be void.⁹ While it is true, where a corporation has been legally created and organized under the laws of a state for the transaction of any business there, it may, by comity existing between the states, transact business in another state, provided it be not in contravention of the laws or public policy of the latter, it is also well settled that a corporation created under the laws of one state cannot hold corporate meetings in another for the purpose of organizing the corporation, electing its officers, or performing any strictly corporate functions in its organization.¹⁰

§ 103. Methods of Selecting Directors.—While the directors selected after incorporation are always elected by the stockholders in meeting assembled, those named prior to incorporation are in some states, as in California, Indiana, New York, and Pennsylvania, merely named as such in the articles and properly serve as such for a year, while in other states, as in Illinois and Massachusetts, they must be selected at a meeting of the proposed stockholders. In the interim between the organization of the corporation and the first election of directors, the corporate powers and authority may be exercised by the directors named in the articles of incorporation.¹¹

⁸ *People v. Stockton & V. R. Co.*, 45 Cal. 306, 13 A. R. 178; *Daily v. Marshall*, 47 Mont. 377, 133 Pac. 681; *People v. Stilwell*, 157 App. Div. 839, 142 N. Y. Supp. 881, 78 M. R. 96, 138 N. Y. Supp. 693.

⁹ *Miller v. Ewer*, 27 Me. 509, 46 A. D. 619; *Mitchell v. Vermont Copper Co.*, 67 N. Y. 280.

¹⁰ *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484.

¹¹ *Middleton v. Arastraville Mining Co.*, 146 Cal. 219, 222, 79 Pac. 889. See, also, chapter "The Board of Directors."

§ 104. **Organization With "Dummy Directors."**—Very frequently the incorporation and organization of a corporation are effected through what are known as "dummy directors." In the articles there are named as directors for the first year three or more trusted persons. They sign and acknowledge the articles, and to them is issued the certificate. They then proceed to organize by electing a president, a vice president, a secretary, and a treasurer from among themselves, issue to each one of themselves, one share of stock, adopt a code of by-laws by assent, and open the proper corporation books. Such a method is resorted to at times merely to obviate the clerical work attached to the inception and management of a corporation whose business is not of an active nature. The office force of the attorney handling the matter of incorporating is frequently employed for this purpose. Being under the close supervision of the attorney, they are in a position to readily comply with all legal requirements. After the corporation is organized and ready to commence business, the dummy directors transfer their stock on the books of the corporation to the real parties in interest, and resign in succession, and new ones are elected by the board to take their places and select new officers. Though the legality of a corporation organized with dummy directors has been sanctioned by the United States supreme court, it is apparent from the reading of the reported case that the moral status of the corporation is not above criticism.¹²

§ 105. **Organization of Corporation and Minutes of Its Meetings—Model Set of Minutes.**—In most states corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained

¹² *Dickerman v. Northern Trust Co.*, 176 U. S. 181, 20 S. Ct. 311, 44 L. Ed. 423.

leave of absence therefrom. On a similar request the ays and noes must be taken on any proposition, and a record thereof made.¹³

The minutes of a corporation from the time it is organized and ready to commence business, showing the various acts done in organizing the corporation, such as, the first meeting of the incorporators, the adoption of a code of by-laws, the first meeting of the board of directors, the application for a permit to issue and sell its securities, the election of new officers, etc., are given in the following forms:

Consent and Waiver of Notice of First Meeting of Incorporators and Subscribers.

We, the undersigned, being all the incorporators and subscribers to the stock of Lifetime Realty Company, Inc., organized under the laws of the State of California, do hereby waive notice of the time, place and purpose of the first meeting of the said corporation and do fix the 13th day of September, 1926, at 10:00 o'clock in the forenoon, as the time, and the principal office of said corporation at 306 Scripps Building, San Diego, California, as the place of said meeting. And we do hereby waive all the requirements of the statutes of California, both as to the notice of this meeting and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

W. E. HARDENBURG.

L. T. ALLEN.

GEORGE WALTON.

Dated, September 10, 1926.

Minutes of First Meeting of Incorporators.

The first meeting of the incorporators and subscribers to the stock of Lifetime Realty Company, Inc., was held on the 13th day of September, 1926, at 10:00 o'clock in the forenoon, at its principal office, 306 Scripps Building, San Diego, California, pursuant to the foregoing written waiver of notice signed by all of said incorporators and subscribers.

The following incorporators and subscribers were present in person:

Names.	Number of Shares.
W. E. Hardenburg	1
L. T. Allen	1
George Walton	1

being all of the incorporators and subscribers to the stock of the corporation.

On motion made, seconded and carried, Mr. Hardenburg was chosen as chairman and Mr. Allen was chosen as secretary of the meeting.

The chairman then announced that the certificate of incorporation had

¹³ See California Civil Code, sec. 377; Idaho Comp. Stats. 1919, sec. 4758; Montana Rev. Codes, 1921, sec. 6008.

been issued by the secretary of state, and that a copy thereof certified by the secretary of state had been filed in the office of the county clerk of the county of San Diego, State of California, on the 10th day of September, 1926. Upon motion duly seconded it was unanimously resolved that a copy of the articles of incorporation, and a copy of such certificate of incorporation, be spread upon the minutes. Said articles of incorporation and said certificate of incorporation are as follows:

Articles of Incorporation of Lifetime Realty Company, Inc.

Know all men by these presents: That we, the undersigned, a majority of whom are citizens and residents of the state of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under and by virtue of the laws of the state of California, and we hereby certify:

First. That the name of said corporation shall be Lifetime Realty Company, Inc.

Second. That the purposes for which said corporation is formed are:

1. To buy, own, sell, mortgage, lease and deal in real estate.
2. To build houses or other buildings of every kind and character, either for sale or lease or on contract or otherwise.
3. To lay out, subdivide, resubdivide and plat tracts of land and sell same, either by such subdivision or resubdivision.
4. To improve lands laid out, subdivide or resubdivide, grade, oil, and improve streets, alleys, parks and other places, and sidewalk, curb and otherwise improve the same, and construct and maintain and operate sewers and any and all other conveniences and matters in connection therewith.
5. To act as agent for insurance companies in soliciting and receiving applications for fire, casualty, plate glass, boiler, elevator, accident, health, burglary, rent, marine, credit, life insurance and all other kinds of insurance, the collection of premiums and doing such other business as may be delegated to agents by such companies, and to conduct a general insurance agency and insurance brokerage business.
6. To loan money and generally to transact such other business as may be necessary or proper to carry out the purposes of said corporation, and to promote either its interests or the interests of its stockholders.
7. To borrow money, execute notes, and deeds, and contracts and mortgages, and to mortgage, to pledge, to bond, to lease and to hypothecate any and all of its real and personal property to secure the payment of any and all sums of money borrowed by said corporation and as security for any obligation which said corporation may incur.
8. To do each and everything suitable, necessary or proper for the accomplishment, protection or maintenance of any of the purposes or the attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of said corporation, either as holders or owners of or interested in any property, it being the intention that the objects, purposes and powers speci-

fied herein, except where otherwise expressed herein, be in no wise limited or restricted by reference to or in reference from the terms of any other clause or any other paragraph in this instrument, but that the objects, purposes and powers specified in each of the clauses of this instrument shall be regarded as independent objects, purposes and powers.

9. To conduct said business above specified in any and all of its branches and ramifications and to do such business in any and all places in the United States and in the territories of the United States and all foreign countries, either as principal, agent, director, or otherwise.

Third. That the place where the principal business of said corporation is to be located is in the city of San Diego, county of San Diego, state of California.

Fourth. That the term for which said corporation is to exist is fifty (50) years from and after the date of this incorporation.

Fifth. That the board of directors of said corporation shall be three (3), and that the names and residences of said directors who are appointed for the first year and to serve until the election and qualification of such officers, are as follows:

Name.	Residence.
W. E. Hardenburg.....	1107 Grimm Street, San Diego, Cal.
George Walton.....	3874 Fifth Street, San Diego, Cal.
L. T. Allen.....	5894 Grape Street, San Diego, Cal.

Sixth. That the amount of the capital stock of said corporation is twenty-five thousand dollars (\$25,000), and the number of shares into which it is divided is two hundred and fifty (250) of the par value of one hundred dollars (\$100) each.

Seventh. That the amount of said capital stock which has been actually subscribed is three hundred dollars (\$300), and the following are the names of the persons by whom the same has been subscribed, to wit:

Name.	Number of Shares.	Amount
W. E. Hardenburg.....	One (1)	\$100.00
L. T. Allen.....	One (1)	\$100.00
George Walton.....	One (1)	\$100.00

In witness whereof, we have hereunto set our hands and seals upon this third day of September, 1926.

W. E. HARDENBURG.
L. T. ALLEN.
GEORGE WALTON.

State of California, County of San Diego, ss.

On this 3d day of September, in the year 1926, before me, John Markey, a notary public in and for the said county, residing therein, duly commissioned and sworn, personally appeared W. E. Hardenburg, L. T. Allen and George Walton, known to me to be the persons whose names are subscribed to the foregoing instrument, and they duly acknowledged to me that they executed the same.

9—Corp. Management

Witness my hand and official seal, the day and year first in this certificate above written.

JOHN MARKEY,

Notary Public in and for the County of
San Diego, State of California.

My commission expires December 31, 1928.

Certificate of Incorporation.

STATE OF CALIFORNIA—DEPARTMENT OF STATE.

No. 158.

I, Frank C. Jordan, secretary of state of the state of California, do hereby certify that the articles of incorporation of Lifetime Realty Company, Inc., containing the required statement of facts, to wit, the name of the corporation as aforesaid; the purposes for which it is formed; the place where its principal business is to be transacted; the term for which it is to exist; the number of its directors or trustees, and the names and residences of those who are appointed for the first year; the amount of its capital stock, and the number of shares into which it is divided, and the par value thereof, the amount of its capital stock actually subscribed, and by whom, were this day filed in this office.

In witness whereof, I have hereunto set my hand and affixed the great seal of the state of California this 8th day of September, 1926.

FRANK C. JORDAN, Secretary of State.

(Seal)

By FRANK H. CORY, Deputy.

The secretary presented a form of by-laws for the regulation of the affairs of the corporation, which were read, section by section.

On motion, duly made, seconded and carried, it was

RESOLVED, That the by-laws submitted at and read to this meeting be, and the same hereby are, adopted as and for the by-laws of this corporation, and that the secretary be, and he hereby is, instructed to cause the same to be inserted in the minute book. Said code of by-laws is in words and figures as follows, to wit:

By-Laws of Lifetime Realty Company, Inc.

OFFICE.

1. The principal office shall be in the City of San Diego, County of San Diego, State of California.

SEAL.

2. The company shall have a common seal, consisting of a circle and bearing the words, Lifetime Realty Company, Inc., incorporated September 8, 1926, California.

STOCKHOLDERS MEETINGS.

3. All meetings of the stockholders shall be held at the office of the corporation in San Diego, California.

4. An annual meeting of the stockholders shall be held at the office of the corporation at San Diego, California, on the first Tuesday in February

in each year if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10:00 o'clock a.m., when they shall elect by a plurality vote, by ballot, a board of directors, and transact such other business as may properly be brought before the meeting.

5. The holders of a majority of the stock issued and outstanding, and entitled to vote thereat, present in person, or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by law, by the certificate of incorporation or by these by-laws. If, however, such majority shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person, or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of voting stock shall be present. At such adjourned meeting at which the requisite amount of voting stock shall be represented any business may be transacted which might have been transacted at the meeting as originally notified.

6. At each meeting of the stockholders every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation, except that no share of stock shall be voted on at any election for directors which has been transferred on the books of the corporation within twenty days next preceding such election. The vote for directors, and, upon the demand of any stockholder, the vote upon any question before the meeting, shall be by ballot.

7. Written notice of the annual meeting shall be mailed to each stockholder entitled to vote thereat at such address as appears on the stock book of the corporation, at least ten days prior to the meeting.

8. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the residence of each, and the number of voting shares held by each, shall be prepared by the secretary and filed in the office where the election is to be held, at least ten days before every election, and shall at all times, during the usual hours for business; and during the whole time of said election, be open to the examination of any stockholder.

9. Special meetings of the stockholders, for any purpose, or purposes, unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the board of directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

10. Business transacted at all special meetings shall be confined to the objects stated in the call.

11. Written notice of a special meeting of stockholders, stating the time and place and object thereof shall be mailed, postage prepaid, at least two days before such meeting, to each stockholder entitled to vote thereat at such address as appears on the books of the corporation.

DIRECTORS.

12. The property and business of this corporation shall be managed by its board of directors, three in number. Directors shall be stockholders. They shall be elected at the annual meeting of the stockholders, and each director shall be elected to serve until his successor shall be elected and shall qualify.

13. The directors may hold their meetings and have one or more offices, and keep the books of the corporation, except the original or duplicate stock ledger, at such places as they may from time to time determine.

14. In addition to the powers and authorities by these by-laws expressly conferred upon them the board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws directed or required to be exercised or done by the stockholders.

EXECUTIVE COMMITTEE.

15. There may be an executive committee of two or more directors designated by resolution passed by a majority of the whole board. Said committee may meet at stated times, or on notice to all by any of their own number. During the intervals between meetings of the board such committee shall advise with and aid the officers of the corporation in all matters concerning its interests and the management of its business, and generally perform such duties and exercise such powers as may be directed or delegated by the board of directors from time to time. The board may delegate to such committee authority to exercise all the powers of the board, excepting power to amend the by-laws, while the board is not in session. Vacancies in the membership of the committee shall be filled by the board of directors at a regular meeting or at a special meeting called for that purpose.

16. The executive committee shall keep regular minutes of its proceedings and report the same to the board when required.

COMPENSATION OF DIRECTORS.

17. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board; provided, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

18. Members of special or standing committees may be allowed like compensation for attending committee meetings.

MEETINGS OF THE BOARD.

19. The newly elected board may meet at such place and time as shall be fixed by the vote of the stockholders at the annual meeting, for the

purpose of organization or otherwise, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting; provided, a majority of the whole board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all the directors.

20. Regular meetings of the board may be held without notice at such time and place as shall from time to time be determined by the board.

21. Special meetings of the board may be called by the president on two days' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two directors.

22. At all meetings of the board a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or by these by-laws.

OFFICERS.

23. The officers of the corporation shall be chosen by the directors and shall be a president, vice-president, secretary and treasurer. The secretary and treasurer may be the same person, and the vice-president may hold at the same time the office of secretary or treasurer.

24. The board of directors, at its first meeting after each annual meeting of stockholders shall choose a president and vice-president from their own number, and a secretary and a treasurer who need not be members of the board.

25. The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

26. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

27. The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors.

THE PRESIDENT.

28. (a) The president shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the board are carried into effect.

(b) He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation; shall keep in safe custody the seal of the corporation, and when authorized by the board, affix the same

to any instrument requiring it, and when so affixed it shall be attested by the signature of the secretary or the treasurer.

(c) He shall be ex officio a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of president of a corporation.

VICE-PRESIDENT.

29. The vice-president shall, in the absence or disability of the president, perform the duties and exercise the powers of the president, and shall perform such other duties as the board of directors shall prescribe.

THE SECRETARY.

30. The secretary shall attend all sessions of the board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. He shall be sworn to the faithful discharge of his duty.

THE TREASURER.

31. (a) The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the board of directors.

(b) He shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation.

(c) He shall give the corporation a bond if required by the board of directors in a sum, and with one or more sureties satisfactory to the board, for the faithful performance of the duties of his office, and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

VACANCIES.

32. If the office of any director, or of any officer or agent, one or more, becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, the directors by a majority vote may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

DUTIES OF OFFICERS MAY BE DELEGATED.

33. In case of the absence of any officer of the corporation, or for any other reason that the board may deem sufficient, the board may delegate,

for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director, provided a majority of the entire board concur therein.

CERTIFICATES OF STOCK.

34. The certificates of stock of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary.

TRANSFERS OF STOCK.

35. Transfers of stock shall be made on the books of the corporation only by the person named in the certificate or by attorney, lawfully constituted in writing, and upon surrender of the certificate therefor.

CLOSING OF TRANSFER BOOKS.

36. The board of directors may close the transfer books in their discretion for a period not exceeding thirty days preceding any meeting, annual or special, of the stockholders, or the day appointed for the payment of a dividend.

REGISTERED STOCKHOLDERS.

37. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware.

LOST CERTIFICATE.

38. Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that fact and advertise the same in such manner as the board of directors may require, and shall if the directors so require give the corporation a bond of indemnity, in form and with one or more sureties satisfactory to the board, in at least double the value of the stock represented by said certificate, whereupon a new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed.

INSPECTION OF BOOKS.

39. The directors shall determine from time to time whether, and, if allowed, when and under what conditions and regulations the accounts and books of the corporation (except such as may by statute be specifically open to inspection) or any of them shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted and limited accordingly.

CHECKS.

40. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the board of directors may from time to time designate.

FISCAL YEAR.

41. The fiscal year shall begin the first day of June in each year.

DIVIDENDS.

42. Dividends upon the capital stock of the corporation, when earned, may be declared by the board of directors at any regular or special meeting.

Before payment of any dividend or making any distribution of profits, there may be set aside out of the surplus or net profits of the corporation such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation.

DIRECTORS' ANNUAL STATEMENT.

43. The board of directors shall present at each annual meeting, and when called for by vote of the stockholders at any special meeting of the stockholders, a full and clear statement of the business and condition of the corporation.

NOTICES.

44. Whenever under the provisions of these by-laws notice is required to be given to any director, officer, or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in the post-office or letter-box, in a post-paid sealed wrapper, addressed to such stockholder, officer or director at such address as appears on the books of the corporation, or, in default of other address, to such director, officer or stockholder at the General Post Office in the City of San Diego, California, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Any stockholder, director, or officer may waive any notice required to be given under these by-laws.

AMENDMENTS.

45. These by-laws may be altered or amended by the affirmative vote of two-thirds of the stock issued and outstanding and entitled to vote thereat, at any regular or special meeting of the stockholders if notice of the proposed alteration or amendment be contained in the notice of the meeting, or by the affirmative vote of a majority of the board of directors at any regular or special meeting called for that purpose, or by the unanimous vote of all of the directors at any meeting.

Know all men by these presents: That we, the undersigned, being the holders and owners of the entire subscribed capital stock of Lifetime Realty Company, Inc., to wit, three (3) shares, hereby assent to the foregoing by-laws of this corporation.

In witness whereof, we have hereunto subscribed our names this 13th day of September, 1926.

Stockholders	{	W. E. HARDENBURG.
		L. T. ALLEN.
		GEORGE WALTON. ¹⁴

¹⁴ In some states, such as California (sec. 304 of the Civil Code), it is provided that all by-laws adopted must be certified by a majority of the

The chairman stated that the next business before the meeting was the election of a board of directors.

Messrs. W. E. Hardenburg, L. T. Allen, and George Walton were nominated for directors of the corporation, to hold office until their respective successors are elected and qualified. No other nominations having been made, a ballot was duly taken and all the stockholders having voted and their ballots duly canvassed, the chairman declared that the above-named persons had been elected directors of the company by the unanimous vote of all the stockholders.¹⁵

Their being no further business before the meeting, an adjournment was taken *sine die*.

W. E. HARDENBURG,
Chairman.
L. T. ALLEN,
Secretary of Meeting.

Waiver of Notice of First Meeting of the Board of Directors.

We, the undersigned, being all the directors of Lifetime Realty Company, Inc., do hereby waive notice of the time, place and purpose of the first meeting of the board of directors of said corporation, and consent that the same be held on the 13th day of September, 1926, at 3:00 o'clock, p. m., at 306 Scripps Building, San Diego, California, and we do further consent to the transaction of all business that may come before the meeting.

W. E. HARDENBURG,
L. T. ALLEN,
GEORGE WALTON.

Dated September 13, 1926.

directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and the book must then be open to the inspection of the public during office hours each day except Sunday. The certificate of the directors and secretary may be in the following form:

Know all men by these presents: That we, the undersigned directors and secretary of Lifetime Realty Company, Inc., do hereby certify that the foregoing by-laws were duly adopted as the by-laws of said corporation, on the 13th day of September, 1926, and that the same do now constitute the by-laws of said corporation.

(Seal) L. T. ALLEN, Secretary.

Directors { W. E. HARDENBURG.
L. T. ALLEN.
GEORGE WALTON.

¹⁵ In the interim between the organization of the corporation and the first election of directors, the corporate powers and authority may be exercised by the directors named in the articles of incorporation. See *Middleton v. Arastraville Min. Co.*, 146 Cal. 219, 79 Pac. 889. Therefore, where the stockholders do not elect a board of directors at their first meeting, the directors named in the Articles of Incorporation can act with the same force and effect as if elected at such first meeting of the stockholders.

Minutes of First Meeting of the Board of Directors.

The first meeting of the board of directors of Lifetime Realty Company, Inc., was held in room 306 Scripps Building, San Diego, California, on the 13th day of September at 3:00 o'clock p. m., pursuant to the foregoing waiver of notice and consent to said meeting.

There were present Messrs. W. E. Hardenburg, L. T. Allen and George Walton, being all of the directors of the company.

Mr. Walton called the meeting to order, and upon motion duly seconded, was appointed temporary chairman, and Mr. Allen was appointed temporary secretary.

The election of officers was thereupon declared to be in order. The following were named and duly elected: W. E. Hardenburg, president; George Walton, vice-president; L. T. Allen, secretary and treasurer.

The president then took the chair.

The secretary was thereupon duly sworn and entered upon the discharge of his duties.

The by-laws adopted at the first meeting of the stockholders were read, and upon motion made, seconded and carried, it was resolved, that the directors and secretary be, and are hereby instructed to certify said by-laws and cause the same to be placed and kept in a book known as the "book of by-laws."¹⁶

On motion, duly made, seconded and carried, it was

(Seal)

RESOLVED, That the seal, an impression of which is herewith affixed, be adopted as the corporate seal of the corporation.

The secretary was authorized and directed to procure the proper corporate books.

On motion, duly made, seconded and carried, it was

RESOLVED, That the treasurer be and he is hereby authorized to open a bank account in behalf of the corporation with the First National Bank of San Diego.

FURTHER RESOLVED, That until otherwise ordered, said bank be and hereby is authorized to make payments from the funds of this corporation on deposit with it upon and according to the check of this corporation signed by its president and treasurer.

On motion, duly seconded, it was unanimously resolved that the principal place of business of the corporation be fixed at 306 Scripps Building, San Diego, California.

On motion, duly seconded, it was unanimously resolved that, subject to the approval of the commissioner of corporations of the state of California, this corporation issue and sell to the following-named persons or their successors in office, at par for cash, a number of shares set opposite

¹⁶ For form of certificate of the directors and secretary to the by-laws, see chapter "By-Laws," sec. 157.

their respective names: W. E. Hardenburg, one share; L. T. Allen, one share; George Walton, one share.

It was then moved, seconded, and unanimously resolved that an application be made to the commissioner of corporations of the state of California for leave to issue and sell the entire capital stock of this corporation. A form of application was then presented to the board, and on motion, duly seconded, the same was approved and the president directed to sign and verify the same and take the necessary steps to present said application to the commissioner of corporations.

Said application is as follows:

**STATE CORPORATION DEPARTMENT
OF THE
STATE OF CALIFORNIA.**

In the matter of the application
of Lifetime Realty Company, Inc., }
for leave to issue and sell its } **Application.**
securities. }

To the Honorable commissioner of corporations of the state of California.

The application of Lifetime Realty Co., Inc., respectfully shows:

1. That applicant is a corporation incorporated under the laws of the state of California, on the 8th day of September, A. D. 1926; that its principal place of business is in the city of San Diego, county of San Diego, state of California.

2. That the authorized capital stock of applicant is twenty-five thousand dollars (\$25,000), divided into two hundred and fifty (250) shares, of the par value of one hundred dollars (\$100) each; that none of said stock has been issued.

3. That applicant proposes to sell its entire capital stock as follows:

One share to each of the following directors at par for cash:

W. E. Hardenburg, one share.....\$100

L. T. Allen, one share.....\$100

George Walton, one share.....\$100

and the balance, two hundred forty-seven (247) shares to the public at large, at par for cash.

4. That no previous sales of stock have been made; and no brokerage has been paid; and that applicant does not intend to pay any brokerage on the sale of said stock. That the company does not propose to issue any prospectus at this time, but should it be found necessary in the future to issue said prospectus it will first be submitted to the office of the commissioner of corporations for his approval.

5. That applicant has not yet commenced business and has no assets except its unissued capital stock, and no liabilities.

6. That a general statement of the nature of applicant's business is as follows: Applicant proposes to carry on a general real estate, insurance and brokerage business. The money from the sale of stock will be used as working capital.

7. The officers and directors of applicant are at present as follows:

W. E. Hardenburg, director and president,
George Walton, director and vice-president,
L. T. Allen, director, secretary and treasurer.

Mr. W. E. Hardenburg is a practicing attorney in the city of San Diego, having practiced his profession in the state of California several years. He has had a wide experience in corporation work. The aforesaid officers and directors are only to serve temporarily, and in all probability will be succeeded by the following officers and directors:

R. V. Ellis, director and officer,
Charles Jones, director and officer,
D. A. Stahel, director and officer.

Mr. R. V. Ellis is to become an officer and director of the company, and will be in full charge of the management of the business. Mr. Ellis is now, and has been for fifteen years, engaged in the real estate, insurance and loan business. Mr. Charles Jones and Mr. D. A. Stahel are to become officers and directors of the company. They have been engaged in the real estate business for a number of years. They are competent and experienced in this work and should prove a valuable asset to the company.

8. That applicant encloses herewith a copy of its articles of incorporation, marked Exhibit "A"; a copy of its by-laws, marked Exhibit "B"; a copy of all minutes of all proceedings of the directors, members or stockholders, relating to or affecting the issue of securities, marked Exhibit "C"; and a copy of the certificate of stock proposed to be issued by it, marked Exhibit "D."

Wherefore, applicant respectfully requests that a permit be issued authorizing it to issue and sell shares of its capital stock as hereinabove set forth.

LIFETIME REALTY COMPANY, Inc.

By W. E. Hardenburg, President.

State of California, }
County of San Diego, } ss.

W. E. Hardenburg, being first duly sworn, deposes and says, that he is the president of Lifetime Realty Company, Inc., the applicant named in the foregoing application; and that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this 13th day of September, 1926.

JOHN MARKEY,
Notary Public in and for the County
of San Diego, State of California.

"Exhibit A."

ARTICLES OF INCORPORATION OF LIFETIME REALTY
COMPANY, INC.

(Here insert copy of articles of incorporation, at length)

"Exhibit B."

BY-LAWS OF LIFETIME REALTY COMPANY, INC.

(Here insert copy of by-laws, at length.)

"Exhibit C."

CERTIFIED COPY OF RESOLUTION.

"On motion, duly seconded, it was unanimously resolved that, subject to the approval of the commissioner of corporations of the state of California, this corporation issue and sell to the following persons, or their successors in office, at par for cash, a number of shares set opposite their respective names.

W. E. Hardenburg, one share.

L. T. Allen, one share.

George Walton, one share.

It was then moved, seconded and unanimously resolved, that an application be made to the commissioner of corporations of the state of California for leave to issue and sell the entire capital stock of this corporation. A form of application was then presented to the board, and on motion, duly seconded, the same was approved, and the president directed to sign and verify the same and take the necessary steps to present said application to the commissioner of corporations."

I hereby certify that I am the duly elected, qualified, and acting secretary of Lifetime Realty Company, Inc.; that the above is a true and correct copy of a resolution adopted at the incorporation meeting of said corporation, held on the 13th day of September, 1926, at 10:00 o'clock, a. m., in the office of said corporation, 306 Scripps Building, San Diego, California; that the same has been duly recorded in the minutes of said corporation and has never been rescinded or revoked; that the same constitutes all of the proceedings of the board of directors, stockholders or members relating to or affecting the issue of securities of said corporation.

In witness whereof, I have hereunto signed my name and affixed the seal of said corporation at San Diego, California, this 13th day of September, 1926.

(Seal)

L. T. ALLEN, Secretary.

"Exhibit D."

COPY OF CERTIFICATE OF STOCK PROPOSED TO BE ISSUED BY
LIFETIME REALTY COMPANY, INCORPORATED.

"Number

..... Shares

Incorporated under the laws of the state of California,

September 8th, 1926.

Capital, \$25,000—250 shares—\$100 each.

Lifetime Realty Company, Inc.

This certifies that is the owner of shares of the capital stock of Lifetime Realty Company, Inc.

Transferable only on the books of the corporation in person or by attorney on surrender of this certificate.

In witness whereof, the duly authorized officers of this corporation have

hereunto subscribed their names and caused the corporate seal to be hereto affixed this day of, A. D. 192...

Paid hereon the sum of \$. per share."

There being no further business, the meeting adjourned.

L. T. ALLEN, Secretary.

(Seal)

W. E. HARDENBURG, President.

Waiver of Notice of Special Meetings of Directors.

The undersigned, constituting all of the directors of Lifetime Realty Company, Inc., hereby give their consent to the holding of a special meeting of the said board on the 23rd day of September, 1926, at 10 o'clock a. m., and each director does hereby waive notice, order or call for the holding of said meeting, and consents to the transaction of such business as may come before said meeting.

Dated September 20, 1926.

W. E. HARDENBURG,

L. T. ALLEN,

GEORGE WALTON.

Minutes of a Special Meeting of the Board of Directors.

A special meeting of the board of directors of Lifetime Realty Company, Inc., was held in room 306 Scripps Building, San Diego, California, on the 23rd day of September, 1926, at 10:00 o'clock a. m., pursuant to the foregoing waiver of notice signed by all said directors.

All of the directors were present. There were also present R. V. Ellis, Charles Jones and D. A. Stahel.

Mr. Hardenburg, president of the corporation, called the meeting to order and presided during its deliberations, and Mr. Allen, secretary of the corporation, acted as secretary of the meeting.

The chairman announced that the permit had been received from the commissioner of corporations of the state of California, authorizing this corporation to issue and sell its capital stock.

On motion duly seconded, it was unanimously resolved that said permit be spread upon the minutes of this meeting. Said permit is in words and figures as follows:

STATE CORPORATION DEPARTMENT of the STATE OF CALIFORNIA

In the Matter of the Application of Lifetime Realty Company, Inc. For a Certificate Authorizing It to Sell Its Securities. Martin Hughes, Attorney for Applicant.	}	Permit
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Pursuant to its application, Lifetime Realty Company, Inc., a California Corporation, is permitted:

1st. To sell and issue one share of its capital stock to each of its three

directors at par, for cash, lawful money of the United States, and so as to net applicant the full amount of the selling price thereof.

2d. Thereafter, and not before, to sell and issue 247 shares of its capital stock at par, for cash, lawful money of the United States, for the uses and purposes recited in its application, and so as to net applicant the full amount of the selling price thereof.

The issuance of this certificate is permissive only and does not constitute a recommendation or indorsement of any securities or other matters herein contained.

Dated, Sacramento, California, September 18th, 1926.

EDWIN M. DAUGHERTY, Commissioner of Corporations.

By ELMER WALTHERS, Deputy.

On motion made, seconded, and carried, one share of the capital stock of this company was sold at par for cost to the following subscribers and incorporators: W. E. Hardenburg, L. T. Allen, and George Walton.

On motion made, seconded and carried, fifty shares of the capital stock of this corporation were sold at par for cash to each of the following named persons: R. V. Ellis, Charles Jones, and D. A. Stahel.

Mr. Walton then tendered his resignation as director and vice-president, which was accepted. W. E. Hardenburg nominated D. A. Stahel for director. No other nominations being made, on motion of L. T. Allen, seconded by W. E. Hardenburg, the ballot was dispensed with, and D. A. Stahel was unanimously declared duly elected director. Mr. D. A. Stahel was present and took his seat as a member of the board. Mr. Stahel was then duly elected vice-president of the corporation.

Mr. L. T. Allen then tendered his resignation as director, secretary, and treasurer, which was accepted. Mr. D. A. Stahel nominated Charles Jones for director. No other nominations being made, on motion of W. E. Hardenburg, seconded by D. A. Stahel, the ballot was dispensed with, and Charles Jones was unanimously declared duly elected director. Mr. Charles Jones was present and took his seat as a member of the board. Mr. Charles Jones was then duly elected secretary and treasurer of the corporation.

Mr. W. E. Hardenburg then tendered his resignation as director and president, which was accepted. Mr. D. A. Stahel nominated R. V. Ellis for director. No other nominations being made, on motion of Charles Jones, seconded by D. A. Stahel, the ballot was dispensed with, and R. V. Ellis was unanimously declared duly elected director. Mr. Ellis was present and took his seat as a member of the board. Mr. R. V. Ellis was then duly elected president of the corporation, taking his chair.¹⁷

¹⁷ Where vacancies exist on the board of directors they may be filled by the directors then in office. The whole board of directors resigned in the manner above shown because they were elected for the purpose of effecting the organization of the corporation, it being understood beforehand that they would resign when this was accomplished. This method eliminates the necessity of calling a special meeting of the stockholders.

There being no further business, the meeting adjourned.

W. E. HARDENBURG, Outgoing President.

L. T. ALLEN, Outgoing Secretary.

R. V. ELLIS, Incoming President.

CHARLES JONES, Incoming Secretary.

Notice of Annual Meeting of Stockholders.

Lifetime Realty Company, Inc.,

Notice is hereby given that the annual meeting of the stockholders of the Lifetime Realty Company, Inc., will be held at the office of said corporation, 306 Scripps Building, in the City of San Diego, State of California, on the 8th day of February, 1927, at 10:00 o'clock a. m., for the purpose of electing directors, and for the transaction of such other business as may be brought before said meeting.

Dated January 23, 1927.

CHARLES JONES, Secretary.

Affidavit of Mailing of Annual Notice of Meeting of Stockholders.

State of California, }
County of San Diego, } ss.

Comes now Charles Jones, who, being first duly sworn, deposes and says: That he is the secretary of the Lifetime Realty Company, Inc., that on the 23rd day of January, 1927, original notices of the annual meeting of the stockholders, the foregoing notice being a copy, were by him properly inclosed and directed and with postage fully prepaid were by him mailed at San Diego, California, to the last known post office addresses of each and every stockholder of record of said corporation.

CHARLES JONES.

Subscribed and sworn to before me this 23rd day of February, 1927.

HENRY SMITH,

Notary Public in and for the County of San Diego, California.

Minutes of Annual Meeting of Stockholders.

The stockholders of the Lifetime Realty Company, Inc., assembled in annual meeting in the office of the company, 306 Scripps Building, San Diego, California, on February 8, 1927, at 10:00 o'clock a. m.

All of the stockholders were present and their names and number of shares owned by them are as follows:

Names.	Number of Shares.
W. E. Hardenburg.....	1
L. T. Allen	1
George Walton	1
R. V. Ellis	50
Charles Jones	50
D. A. Stahel	50

President R. V. Ellis called the meeting to order and presided during its deliberations, and Charles Jones, secretary of the corporation, acted as secretary of the meeting.

The minutes of the first meeting of the stockholders held on the 13th day of September, 1926, were read and on motion, made, seconded and carried approved as read.

The annual report of the president was then submitted and read, and ordered filed.

The annual report of the treasurer was submitted, read, and filed.

The chairman stated that the next business before the meeting was the election of a board of directors.

Mr. G. M. O'Neill and Mr. A. M. Burke were appointed inspectors of election thereupon subscribed and swore to the following oath:

Inspectors' Oath.

State of California, }
County of San Diego, } ss.

G. M. O'Neill and Mr. A. M. Burke being sworn upon their respective oaths do severally promise and swear that they will faithfully, honestly and impartially perform the duties of inspectors of election, at the election of directors of Lifetime Realty Company, Inc., to be held this day, and will to the best of their skill and ability conduct said election, and a true report make of the same.

G. M. O'NEILL.

A. M. BURKE.

Subscribed and sworn to before me this 8th day of February, 1927.

GEORGE COOLEY,

Notary Public in and for the County of
San Diego, State of California.

Messrs. R. V. Ellis, Charles Jones, and D. A. Stahel were nominated for directors of the corporation, to hold office until their respective successors are elected and qualified. No other nominations having been made, the polls were duly opened, and all the stockholders having voted by ballot, the chairman declared the polls closed. Thereupon the inspectors canvassed the vote cast and made and presented the following certificate showing the result of the election:

Inspectors' Certificate.

We, the subscribers, inspectors of election appointed to act at the annual meeting of the stockholders and subscribers to the Lifetime Realty Company, Inc., held this 8th day of February, 1927, do report that, having taken an oath impartially to conduct the election for directors, we did receive the votes of the stockholders by ballot.

We report that 153 votes were cast for the election of directors and that the following persons received the number of votes set opposite their respective names, to wit:

For Directors.	Number of Votes.
R. V. Ellis	153
Charles Jones	153
D. A. Stahel	153

Respectfully submitted,

S. M. O'NEILL,

A. M. BURKE,

Inspectors.

The chairman thereupon declared Messrs. R. V. Ellis, Charles Jones, and D. A. Stahel duly elected directors of the corporation to serve until their respective successors are elected and qualified.

On motion, duly made, seconded and carried, the meeting thereupon adjourned.

CHARLES JONES, President.

D. A. STAHEL, Secretary.
(Seal.)

Waiver of Notice of Special Meeting of Board of Directors.

We, the undersigned directors of the Lifetime Realty Company, Inc., do hereby severally waive notice of the time, place, and purpose of a special meeting of the board of directors of said corporation, and consent that the same be held at the office of said corporation on the 23d day of January, 1927, at 7:00 o'clock p. m., and we do further consent to the transaction of all business that may come before the meeting.

Dated January 23, 1927.

R. V. ELLIS.

CHARLES JONES.

D. A. STAHEL.

Minutes of Special Meeting of the Board of Directors.

A special meeting of the board of directors of the Lifetime Realty Company, Inc., was held at the office of the said corporation, in the City of San Diego, County of San Diego, State of California, on the 23d day of January, 1927, at 7:00 o'clock p. m., pursuant to the foregoing waiver of notice and consent to said meeting.

All of the directors were present at said meeting.

Mr. R. V. Ellis was appointed temporary chairman of said meeting and Charles Jones was appointed temporary secretary.

The chairman announced that the purpose of this meeting was to elect officers of the corporation. The following were named and duly elected: R. V. Ellis, president; D. A. Stahel, vice president; Charles Jones, secretary and treasurer.

The secretary was duly sworn and entered upon the charge of his duties.

It was ordered that the treasurer give a bond in the sum of ten thousand dollars (\$10,000). The treasurer thereupon presented his bond, signed by himself as principal and by John Borofsky and Harry Smith as sureties, which was approved.

The minutes of the meeting of the board of directors held on the 23d day of September, 1926, were read and approved.

On motion made, seconded and carried, it was resolved that the salary of the president of this corporation be fixed at five hundred dollars (\$500) a month. Mr. Ellis was present but took no part in passing this resolution.

On motion made, seconded and carried, it was resolved that the salary of the vice-president of this corporation be fixed at four hundred dollars (\$400) a month. Mr. Stahel was present but took no part in passing this resolution.

On motion, seconded and carried, it was resolved that the salary of the

secretary of this corporation be fixed at three hundred fifty dollars (\$350) a month. Mr. Jones was present, but took no part in passing this resolution.

The matter of payment of taxes for the present year was taken up and after a discussion it was determined to borrow from W. E. Hardenburg sufficient money to pay the first installment.

The matter of putting a sign on each of the company's properties was taken up, and it was decided to place on each piece of property belonging to the company a sign, showing the name and address of the company. It was decided also to borrow from E. R. Hardenburg sufficient money to cover the expense of doing this.

On motion made, seconded and carried, the following resolution was adopted: RESOLVED, That this corporation borrow from W. E. Hardenburg the sum of fifteen hundred dollars (\$1500), and that the president and secretary be authorized to execute a promissory note of the company, said note to be in the sum of fifteen hundred dollars (\$1500), payable one day after date, bearing interest at the rate of 6% per annum.

There being no further business, the meeting adjourned.

R. V. ELLIS, President.

CHARLES JONES, Secretary.

Waiver of Notice of Special Meeting of Board of Directors.

We, the undersigned directors of the Lifetime Realty Company, Inc., do hereby severally waive notice of the time, place, and purpose of a special meeting of the board of directors of said corporation, and consent that the same be held at the office of said corporation on the first day of April, 1927, at 10:00 o'clock a. m., and we do further consent to the transaction of all business that may come before the meeting.

Dated March 25, 1927.

R. V. ELLIS.

CHARLES JONES.

D. A. STAHEL.

Minutes of the Special Meeting of the Board of Directors.

A special meeting of the board of directors of the Lifetime Realty Company, Inc., was held at the office of the said corporation, in the City of San Diego, County of San Diego, State of California, on the first day of April, 1927, at 10 o'clock a. m., pursuant to the foregoing waiver of notice and consent to said meeting.

All of the directors were present at said meeting.

Mr. Ellis, president of the corporation, called the meeting to order and presided during its deliberations, and Mr. Jones, secretary of the corporation, acted as secretary of the meeting.

The minutes of the special meeting of the board of directors held on the 23d day of January, 1927, were read and approved.

The chairman announced that the purpose of the meeting was to consider the advisability of effecting a dissolution of the corporation.

On motion made, seconded and carried, the following preamble and resolution were adopted:

WHEREAS, This corporation, Lifetime Realty Company, Inc., is not actively engaged in the transaction of business for which it was chiefly organized, and it appears in the judgment of the board of directors that it will be for the best interests of the corporation and of its stockholders that the corporation should be dissolved, its business wound up and its assets disposed of according to law;

NOW, THEREFORE, BE IT RESOLVED, That a meeting of the stockholders of this corporation be, and the same hereby called an order to be held at the office of said corporation on the 20th day of April, 1927, at the hour of 10:00 o'clock a.m., for the purpose of considering and acting upon the proposition of dissolving the said corporation, winding up its affairs and disposing of its assets according to law, and the president and secretary of this corporation are hereby ordered and directed to give notice of the said meeting in the manner provided in the by-laws.

There being no further business, the meeting adjourned.

R. V. ELLIS, President.

CHARLES JONES, Secretary.

Notice of Special Meeting of Stockholders.

Please take notice that a special meeting of the stockholders of the Lifetime Realty Company, Inc., will be held at the office of the corporation at 306 Scripps Building, San Diego, California, the same being the principal place of business of said corporation, and the place where the stockholders usually meet, on the 20th day of April, 1927, at the hour of 10:00 o'clock a. m. Said meeting is called for the purpose of considering and acting upon the proposition of dissolving of said corporation, winding up its affairs, paying its debts and distributing its assets according to law.

By order of the Board of Directors.

R. V. ELLIS, President.

CHARLES JONES, Secretary.

Minutes of the Special Meeting of Stockholders.

Pursuant to the foregoing notice, a special meeting of the stockholders of the Lifetime Realty Company, Inc., was held at the office of said corporation, 306 Scripps Building, San Diego, California, on the 20th day of April, 1927, at 10:00 o'clock a. m.

The following stockholders were present:

Names.	Number of Shares.
W. E. Hardenburg	1
L. T. Allen	1
George Walton	1
R. V. Ellis	50
Charles Jones	50
D. A. Stahel	50

they being all of the stockholders of said corporation.

Mr. Ellis, president of the corporation, called the meeting to order and

presided during its deliberations, and Mr. Jones, secretary of the corporation, acted as secretary of the meeting.

The minutes of the annual meeting of the stockholders held on the 8th day of February, 1927, were read and upon motion made, seconded and carried were approved as read.

President Ellis stated that the purpose of the meeting was to consider and act upon the proposition of dissolving the corporation, winding up its affairs, paying its debts, and distributing its assets.

On motion made, seconded and carried, the following resolution was unanimously adopted:

RESOLVED, That immediate steps be taken for the payment of the debts of this corporation, the distribution of its assets, and its dissolution by due process of law, and the board of directors of this corporation is hereby instructed forthwith to pay all the debts of this corporation, and immediately thereafter to cause to be prepared by the attorney of this corporation a proper petition to the Superior Court of the County of San Diego, State of California, praying for the dissolution of this corporation and to prosecute said proceedings with all convenient speed; and

BE IT FURTHER RESOLVED, That the said distribution be made as soon as practicable after the filing of said petition in court and the board of directors is hereby authorized and directed to conduct said distribution, and in making such distribution the board of directors shall require from the stockholders proper receipts and acquittances in full for their respective distributive shares of the assets of this corporation, properly endorsed, to be held by the board of directors for cancellation on distribution, upon the entry of the decree of final dissolution.

There being no further business, the meeting adjourned.

CHARLES JONES, Secretary.

R. V. ELLIS, President.

CHAPTER XV.

THE ARTICLES OF INCORPORATION.

- § 106. Articles of Incorporation—Contents.
- § 107. Preamble to Articles—General Declaration of Intention.
- § 108. Corporate Name.
- § 109. Corporate Purposes.
- § 110. Statement of Place of Business in Articles.
- § 111. The Term of Existence in Articles.
- § 112. Number of Directors in Articles—Trustees.
- § 113. Capital Stock and How Divided.
- § 114. Capital Stock, Amount and Kind Subscribed.
- § 115. Authentication of Articles.
- § 116. Certificate of Incorporation of a Power Company.
- § 117. Articles of Incorporation of a Railroad Company.
- § 118. Articles of Incorporation of a Securities Company.
- § 119. Articles of Incorporation of an Elevator Company.
- § 120. Articles of Incorporation of Real Estate, Insurance, and Brokerage Business.
- § 121. Arizona Articles of Incorporation.
- § 122. Delaware Certificate of Incorporation.
- § 123. Maine Articles of Agreement.
- § 124. Maine Certificate of Organization.
- § 125. Nevada Articles of Incorporation.
- § 126. New Jersey Certificate of Incorporation.
- § 127. New York Certificate of Incorporation.
- § 128. South Dakota Articles of Incorporation.
- § 129. Wyoming Certificate of Incorporation.
- § 130. Articles of Incorporation of Benevolent, or Non-profit Corporations.
- § 131. Articles of Incorporation of a Cooperative Corporation.
- § 132. Necessity of Compliance With Statutory Requirements.
- § 133. Incorporating by Telegraph.

§ 106. **Articles of Incorporation—Contents.**—The articles of incorporation, sometimes called the certificate of incorporation, is the instrument by which the corporation is formed. In general the articles of incorporation should set forth the following:

- (1) The name of the corporation;
- (2) The purpose for which it is formed;
- (3) The place where its principal business is to be transacted;
- (4) The term for which it is to exist;

(5) The number of its directors and the names and residences of those appointed for the first year;

(6) If there is a capital stock, the amount thereof and the number and kinds into which it is divided, and if there are any preferences the character of such preferences;

(7) If there is a capital stock, the amount of each kind actually subscribed and by whom.¹

The requirement of the statute that the objects or purposes of the corporation shall be stated in its articles must be complied with, and such compliance cannot consist of a vague or general specification. Though the name of the corporation as stated in its articles indicates that it is to do a banking business, yet if the statement of its object is such that it substantially includes every business which the company may think profitable to the shareholders, the purposes are insufficiently stated. Hence it is not sufficient to state that the business of the corporation "shall be such as the association may from time to time prescribe by its rules, regulations, and by-laws."²

If the purpose as disclosed in the articles is one not sanctioned by law, no corporation is thereby created.³ If, on the other hand, a lawful purpose is specified, but the articles assume for the corporation the existence of powers which it is not permitted to exercise, then this additional and unauthorized assumption may be treated as surplusage, and the corporation regarded as entitled to exercise the lawful powers only.⁴

If the term of the existence of the corporation as stated in its articles is in excess of the period allowed by law, the corporation will not on that account be regarded as incompetent to carry on its business for such time as the statute permitted to corporations of the class to which it belongs.⁵

¹ See Cal. Civil Code, sec. 290; Idaho Comp. Stats. 1919, sec. 4696; Montana Rev. Codes 1921, sec. 5905.

² *State v. Central Ohio Relief Ass'n*, 29 Ohio St. 399.

³ *State v. Beck*, 81 Ind. 500.

⁴ *Eastern Plank Road Co. v. Vaughn*, 14 N. Y. 546; *Becket v. Uniontown B. Ass'n*, 88 Pa. St. 211; *People v. Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798, 17 A. S. R. 319, 8 L. R. A. 497; *Shick v. Citizens' Enterprise Co.*, 15 Ind. App. 329, 44 N. E. 48, 57 A. S. R. 230.

⁵ *People v. Cheeseman*, 7 Colo. 376, 3 Pac. 716.

§ 107. Preamble to Articles—General Declaration of Intention.—The form by which the general intention to form a corporation is expressed is not a matter of special importance. The solemn form, "Know all men by these presents, that we, the undersigned, do hereby," etc., is most frequently employed; but "We, the undersigned, do hereby," is equally effective. But it is of some importance that the intention to form a corporation rather than a joint stock association be expressed. Sometimes the class or general character of the company is designated in the opening part, for instance, "A corporation to engage in the transportation of freight and passengers by rail," or "A trading corporation"; but such designation is superfluous, except as an aid, sometimes required by rules to that effect, to the state officials in classifying the corporation with a view to determining to what extent the articles comply with statutory requirements applying to a corporation formed for some particular purpose. The corporation is classified and derives its character from the words used in setting forth its purposes.

§ 108. Corporate Name.—The name of the corporation should be set forth in the articles, and should not be identical with, or similar to, the name of any other corporation, since that often leads to litigation, and eventually a change of the corporate name. Most of the states have statutes prohibiting a corporation from adopting the same name as an existing corporation, or a name so nearly resembling it as to be calculated to deceive the general public. Where a statute requires the articles to specify the name by which the trustees are to be called and known, the object is to require a statement of the name of the corporation or society, and where the language of the articles set forth the corporate name rather than the name by which the trustees are to be known, it is a sufficient compliance, since it secures the object of the statute—the adoption of a name under which the trustees may transact business.⁶

As a general rule, a corporation formed under the general

⁶ *Roman Catholic Orphan Asylum v. Abrams*, 49 Cal. 455. See chapter "The Corporate Name," sec. 87 et seq.

laws may adopt any name it desires,⁷ subject to the qualification that an existing body, even though an unincorporated association, may have a property right in its name and cannot be deprived thereof.⁸

§ 109. Corporate Purposes.—While a natural person can do anything not forbidden by law, a corporation can do only those things that are expressly or impliedly authorized by the laws of the state, and the articles of incorporation.⁹ Though a private corporation may be formed for any purpose for which individuals may lawfully associate themselves, it cannot by incorporation effect an unlawful purpose.¹⁰

In preparing the section of the articles of incorporation dealing with corporate purposes, it is advisable to include everything within a reasonable scope, connected with, or incidental to the business intended to be carried out, and to exclude everything not permitted or authorized by the statute of the state, where the corporation is to be organized. The articles of incorporation are not, however, invalidated by the inclusion of unauthorized purposes, if enough authorized purposes are contained in the articles to permit the corporation to carry on a lawful business.¹¹

§ 110. Statement of Place of Business in Articles.—It is practically a uniform requirement of general laws, and sometimes a constitutional requirement, that every corporation shall maintain a principal office, or place of business, within the state of its creation, and that its location shall be set forth in the articles. It is often provided that, having such principal office, the corporation may establish and maintain places of business outside the state. There are, however, no legal or other obstacles to this being done in the absence of such provisions. It is the usual prac-

⁷ *Ogden Packing, etc., Co. v. Wyatt*, 59 Utah 481, 204 Pac. 978, 22 A. L. R. 359. See section 87, ante.

⁸ *Supreme Lodge Knights, etc., v. Improved Order of Knights, etc.*, 113 Mich. 133, 71 N. W. 470, 38 L. R. A. 658.

⁹ *Oregon Ry. & Nav. Co. v. Oregonian Ry. Co.*, 130 U. S. 20, 9 S. Ct. 409, 32 L. Ed. 837. See, also, section 90 et seq.

¹⁰ See *Spurgeon v. Santa Ana, etc., Irr. Co.*, 120 Cal. 71, 52 Pac. 140, 39 L. R. A. 701. See, also, chapter XII, "The Corporate Purposes."

¹¹ *Commonwealth v. Yetter*, 190 Pa. St. 488, 43 Atl. 226.

tice of corporations doing interstate and international business. It is the duty, however, of every corporation, to maintain an office and place of business which may be denominated its "principal place of business."¹² The statement in the articles that a certain place is "the place of business" is not defective because of the omission of the word "principal," as that fact is implied.¹³ In some states, such as Delaware, the certificate of incorporation must set forth, the name of the county and the city, town, or place within the county in which the corporation's principal office or place of business is to be located in that state, and the name of its resident agent, which agent may be either an individual or a corporation. In towns or cities of over six thousand inhabitants, the street and number of such principal office or place of business must be stated, and the address by street and number of said resident agent must be stated. Should such resident agent be not a resident of, nor located in, an incorporated town or city, then the hundred of its or his location or residence, and postoffice address, must be stated.

§ 111. The Term of Existence in Articles.—In the cases of special charters granted without limitation as to duration of the corporations created thereby, the duration of existence is perpetual.¹⁴ The same rule would probably be held to apply to corporations created under general laws if the latter were silent on the subject of a term of existence. But such acts, as a rule, fix the maximum term, some at twenty, others at fifty, and still others at ninety-nine years. In a few of the states, one of which is New Jersey, a corporation may claim in its articles, and enjoy, perpetual existence. The same is true of New York, Nevada, and Oregon. A provision calling for a term in excess of the statutory limit is not defective, however, the maximum period of existence allowed being permitted in such case.¹⁵

§ 112. Number of Directors in Articles — Trustees.—The number of the directors is usually fixed in the articles, although

¹² *Chapman v. Doray*, 89 Cal. 54, 26 Pac. 605.

¹³ *Ex parte Spring Valley Water Works*, 17 Cal. 132.

¹⁴ *Snell v. Chicago*, 133 Ill. 413, 24 N. E. 532, 8 L. R. A. 858.

¹⁵ *People v. Cheeseman*, 7 Colo. 376, 3 Pac. 716.

this rule is not universal. In New Jersey the number is fixed in the by-laws. General incorporation laws usually fix the maximum, as well as the minimum number of directors, which may be provided for. Such is not the rule, however, in New York and New Jersey, where the minimum is three, but there is no maximum. In California, the minimum is three; and, while there is no maximum in the case of corporations in general, definite limits are fixed for certain specified kinds of corporations, such as benevolent, thirty-one, and benevolent hall-managing, fifty. It is frequently prescribed by law that the majority of the directors be residents of the state where incorporation is sought, and that each director be a stockholder in or a member of the corporation. The usual requirement of the names and residences of those elected for the first year implies the power to hold a meeting for that purpose prior to actual incorporation.

§ 113. Capital Stock and How Divided.—A statement of the amount of the capital stock, if the corporation is to do business for profit, is an indispensable part of the articles, as is also a statement of the number of shares into which it is to be divided. The capital stock is a substitute for individual liability, and a failure to provide for it, while not resulting in the creation of a corporation, might cause the abortive attempt to create one to result in a copartnership. Most states permit a corporation to classify its stock as common and preferred. Generally, in such states, it is necessary that the articles should set forth the amount of each kind, the number of shares into which it is divided, and the nature and extent of the preference granted. Some states prescribe a minimum capital stock in all cases. Others require certain amounts in the cases of certain kinds of business. In California there is no minimum for corporations in general; but the requirements in the case, for instance, of railroads as to the amount which must be subscribed prior to incorporation, naturally fix a minimum for the total amount authorized. Few states prescribe a maximum capital stock.

§ 114. Capital Stock, Amount and Kind Subscribed.—A provision in the articles setting forth the amount and kind of capital stock subscribed for prior to incorporation, while neces-

sary in most states, is of great importance where a minimum is established. In New Jersey the minimum is \$1000. In Texas, 50 per cent of the amount originally subscribed must be paid in cash, and the remainder of that authorized actually subscribed, proof being submitted of that fact when applying for a certificate of incorporation. In Pennsylvania, 10 per cent must be subscribed and paid in cash. In most states, however, the preliminary subscription may be represented by either cash or property in general, the remainder being disposed of at will, or, in particular cases, within a specified time. In California, as has been said, only in the case of corporations doing certain kinds of business need there be any certain amount or percentage of the capital stock previously subscribed. Railroad organizations must have subscribed for each mile, \$1000, wagon-road, \$300, and telegraph, \$100; 10 per cent of which must be paid in to the treasurer of the corporation. These facts must be set forth in a separate affidavit of the president, secretary, or treasurer. A similar affidavit is required in the case of trust companies, whose paid-in capital must amount to from \$100,000 to \$200,000, and in the case of banks, where such amount required is from \$25,000 to \$500,000, according to the population of the city. The amount of each kind of stock, preferred or common, must, of course, be set forth. Especially severe punishment is usually visited upon those who seek to secure incorporation by pretending to have secured the requisite amount of subscriptions by fictitious or impecunious subscribers.

§ 115. Authentication of Articles.—In all states having general incorporation laws, the instrument of incorporation, whether designated “articles” or otherwise, must be properly authenticated before presentation for filing. Such authentication is usually required to consist in acknowledgment before a duly authorized officer. A failure to acknowledge the “articles” is a fatal defect, and does not estop one of the incorporators from denying the validity of the incorporation, though the certificate of the secretary of state recite that the articles were duly acknowledged. Nor would amending them and the issuance of a new certificate by the same, or another officer, cure the irregularity

except from the later date on.¹⁶ The requisite and proper number of persons must not only subscribe to the articles, but also acknowledge them. A subscription by the proper number but an acknowledgment by too few will result in the invalidation of the incorporation.¹⁷ In states where it is provided further that the signature of each person named as director must be affixed to the articles and acknowledged, if more than the minimum number of directors are named, each must comply with this requirement. Where the statutes require that the articles of incorporation be signed or subscribed by the members the provision must be complied with,¹⁸ and it is essential that the articles be signed by the number of persons prescribed by the statute.¹⁹

§ 116. Certificate of Incorporation of a Power Company.

We, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Delaware.

First: The name of this corporation is

INTERSTATE POWER COMPANY

Second: Its principal office in the State of Delaware is located at No. 7 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is the Corporation Trust Company of America, No. 7 West Tenth Street, Wilmington, Delaware.

Third: The nature of the business or objects or purposes proposed to be transacted, promoted or carried on by this Corporation are as follows:

(a) To purchase or otherwise acquire, own, operate and dispose of all or any part of the business and properties of Interstate Power Company, a Wisconsin corporation; to make payment therefor by the issuance of preferred and common stock of this Corporation or in any other manner permitted by law, and in connection therewith to assume any or all of the bonds, mortgages, franchises, leases, contracts, indebtedness, liabilities and obligations of said corporation.

(b) To generate, produce, buy, or in any manner acquire and to sell, dispose of and distribute electricity for light, heat, power and other pur-

¹⁶ *State v. Critchett*, 37 Minn. 13, 32 N. W. 787; *Corey v. Morrill*, 61 Vt. 598, 17 Atl. 840.

¹⁷ *People v. Golden Gate Lodge of Elks*, 128 Cal. 257, 60 Pac. 865; *Wall v. Mines*, 130 Cal. 27, 62 Pac. 386; *People v. Montecito Water Co.*, 97 Cal. 276, 32 Pac. 236, 33 A. S. R. 172.

¹⁸ *Lawrie v. Silsby*, 76 Vt. 240, 56 Atl. 1106, 104 A. S. R. 927.

¹⁹ *Corey v. Morrill*, 61 Vt. 598, 17 Atl. 840; *State v. Critchett*, 37 Minn. 13, 32 N. W. 787.

poses and to carry on the business of furnishing, supplying and vending light, heat, power and water and any and all businesses incident thereto and to build, construct, develop, improve, acquire, hold, own, lease, maintain and operate plants, facilities and works for the manufacture, generation, production, accumulation, transmission and distribution of electric energy, gas and steam, for light, heat, power and other purposes; and to acquire, construct, maintain and operate systems of water works for the supply of water.

(c) To build, construct, develop, improve, acquire, hold, own, lease, maintain and operate, by electricity, or other power, street railways and interurban railways for the transportation of passengers, mail, express, merchandise or other freight in any part of the world, except that this corporation shall not have power to construct, maintain or operate railroads or railways within the State of Delaware.

(d) To produce, mine, buy, sell, store, market, deal in and prospect for coal and minerals of all kinds and the products and by-products thereof.

(e) To organize, incorporate, reorganize, finance and to aid and assist financially or otherwise, companies, corporations, joint stock companies, syndicates, partnerships and associations of all kinds, particularly those engaged in operating public utilities, and to underwrite, subscribe for and endorse the bonds, stocks, securities, debentures, notes or undertakings of any such company, corporation, joint stock company, syndicate, partnership or association, and to make any guarantee in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking, and to do any and all things necessary or convenient to carry any of such purposes into effect.

(f) To carry on the business of engineering and contracting in all of its branches; to appraise, value, design, build, construct, enlarge, develop, improve, extend and repair light, heat, power, transmission and hydraulic plants, electrical works, machinery and appliances, telegraph and telephone lines, dams, reservoirs, canals, bridges, piers, docks, mines, shafts, tunnels, wells, water works, street railways, interurban railways, railways and buildings.

(g) To purchase and acquire securities, assets and property of every kind and description at judicial, judiciary, trustee's, pledgee's, mortgagee's, or liquidating or public or private sales, and to carry on a general salvage liquidation and realization business; and also to do a general commission and brokerage business.

(h) To hold in trust, issue on commission, make advances upon or sell, lease, license, transfer, organize, reorganize, incorporate or dispose of any of the undertakings or resulting investments aforesaid, or the stock or securities thereof; to act as agent, or depositary for any of the above or like purposes, or any purpose herein mentioned, and to act as fiscal agent of any other person, firm or corporation.

(i) To obtain the grant of, purchase, lease, or otherwise acquire any concessions, rights, options, patents, privileges, lands, rights of way, sites, properties, undertakings or businesses, or any right, option or contract in

relation thereto, and to perform, carry out and fulfill the terms and conditions thereof, and to carry the same into effect, and to develop, maintain, lease, sell, transfer, dispose of and otherwise deal with the same.

(j) From time to time to apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, ordinance, order, right or privilege, which any government or authority, supreme, municipal or local, or any corporation or other public body shall enact, make or grant.

(k) To issue shares of the capital stock (of any class), bonds, debentures, debenture stock, notes and other obligations of this corporation for cash, for labor done, for property, real or personal or leases thereof, or for any combination of any of the foregoing, or in exchange for the stock, debentures, debenture stock, bonds, securities or obligations of any person, firm, association, corporation or other organization.

(l) To purchase, acquire and lease, and to sell, lease and dispose of water, water rights, water records, power privileges and appropriations for power, light, heat, mining, milling, irrigation, agricultural, domestic or any other use or purpose.

(m) To acquire by purchase, lease, own, hold, sell, mortgage, and encumber both improved and unimproved real estate wherever situate; to survey, subdivide, plat, colonize and improve the same for purposes of sale or otherwise; and to construct and erect thereon factories, works, plants, stores, mills, hotels, houses and buildings.

(n) To subscribe for, or cause to be subscribed for, buy, own, hold, purchase, receive, or acquire, and to sell, negotiate, guarantee, assign, deal in, exchange, transfer, mortgage, pledge or otherwise dispose of, shares of the capital stock, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, acceptances, drafts and evidences of indebtedness issued or created by other corporations, joint stock companies or associations, whether public, private or municipal, or any corporate body, and while the owner thereof, to possess and to exercise in respect thereof all the rights, powers and privileges of ownership, including the right to vote thereon; to guarantee the payment of dividends on any shares of the capital stock of any of the corporations, joint stock companies or associations in which this Corporation has or may at any time have an interest, and to become surety in respect of, endorse or otherwise guarantee the payment of the principal of or interest on any scrip, bonds, coupons, mortgages, debentures, debenture stocks, securities, notes, drafts, bills of exchange or evidences of indebtedness, issued or created by any such corporations, joint stock companies or associations; to become surety for or guarantee the carrying out and performance of any and all contracts, leases and obligations of every kind of any corporations, joint stock companies or associations, and in particular of any corporation, joint stock company or association any of whose shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange or evidences of indebtedness, are at any time held by or for this Corporation. and to do any acts or things designed to protect, preserve, improve, or

enhance the value of any such shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange or evidences of indebtedness.

(o) To manufacture, buy, sell and generally deal in, goods, wares, merchandise, property and commodities of any and every class and description, and all articles used or useful in connection therewith, insofar as may be permitted by the laws of the State of Delaware; to engage in any business, whether manufacturing or otherwise which this corporation may deem advantageous or useful in connection with any or all of the foregoing, and to purchase, acquire, manufacture, market or prepare for market, sell and otherwise dispose of any article, commodity or thing which this Corporation may use in connection with its business.

(p) To secure, purchase, acquire, apply for, register, own, hold, sell or dispose of any and all copyrights, trade-marks and other trade rights.

(q) To organize, or cause to be organized, under the laws of the State of Delaware, or of any other state, territory or country, or the District of Columbia, a corporation or corporations, for the purpose of accomplishing any or all of the objects for which this Corporation is organized, and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations, or to cause the same to be dissolved, wound up, liquidated, merged or consolidated.

(r) To purchase, apply for, obtain or otherwise acquire any and all letters patent, licenses, patent rights, patented processes and similar rights granted by the United States or any other government or country, or any interest therein, or any inventions which may seem capable of being used for or in connection with any of the objects or purposes of this Corporation, and to use, exercise, develop, sell, dispose of, lease, grant licenses in respect to, or other interests in the same, and otherwise turn the same to account, and to carry on any business, manufacturing or otherwise which may be deemed to directly or indirectly aid, effectuate or develop the objects or any of them of this Corporation.

(s) To borrow money for any of the purposes of this Corporation, and to issue bonds, debentures, debenture stock, notes and other obligations therefor, and to secure the same by pledge or mortgage of the whole or any part of the property of this Corporation, either real or personal, or to issue bonds, debentures, debenture stock, notes or other obligations without any such security.

(t) To enter into, make, perform and carry out contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association or corporation.

(u) To draw, make, accept, endorse, discount, guarantee, execute and issue promissory notes, bills of exchange, drafts, warrants, and all kinds of obligations and certificates and negotiable or transferable instruments.

(v) To purchase, hold, sell and transfer shares of its own capital stock (of any class), bonds and other obligations of this Corporation from time to time to such extent and in such manner and upon such terms as its Board of Directors shall determine; provided that this Corporation shall

not use any of its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of this Corporation; and provided further that shares of its own capital stock belonging to this corporation shall not be voted upon directly or indirectly.

(w) To have one or more offices, to carry on any or all of its operations and business, and, without restriction or limit as to amount, to purchase, lease, or otherwise acquire, hold and own, and to mortgage, sell, convey, lease or otherwise dispose of, real and personal property of every class and description, in any of the states or territories of the United States and in the District of Columbia, and in any and all foreign countries, subject to the laws of such state, district, territory or country.

(x) To do any and all things herein set forth, and in addition such other acts and things as are necessary or convenient to the attainment of the purposes of this Corporation, or any of them, to the same extent as natural persons lawfully might or could do in any part of the world, in so far as such acts are permitted to be done by a corporation organized under the General Corporation Laws of the State of Delaware.

The foregoing clauses shall be construed, both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this Corporation, and are in furtherance of, and in addition to, and not in limitation of the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects and powers specified in this Article Third and all subdivisions thereof shall, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this article, and that each of the purposes, objects and powers specified in this Article Third shall be regarded as independent purposes, objects and powers.

Fourth: The total number of authorized shares of the capital stock of this Corporation is 300,000, divided into two classes, namely, preferred stock and common stock, all of which shall be without nominal or par value. The total number of shares of such preferred stock authorized is 200,000 shares without nominal or par value. The total number of shares of such common stock authorized is 100,000 shares without nominal or par value. The description of said classes of stock, and the designations, preferences and restrictions, if any, and voting powers, or restrictions or qualifications thereof, of such preferred stock and common stock, are as follows:

I. The preferred stock may be issued from time to time, either as preferred stock of a series to be designated as "\$7 Dividend Preferred Stock" (hereinafter referred to as the original series) or, if so determined from time to time by the Board of Directors, either in whole or in part as one or more other series, each series to be appropriately designated by distinguishing number, letter or title, prior to the issue of any shares thereof.

The preferred stock of all series shall be of the same class and of equal rank, and shall be identical in all respects, except that

(a) the maximum dividend rate of the preferred stock of the original series shall be \$7 per share per annum, and the maximum dividend rate of the preferred stock of each other series shall be such rate, not exceeding \$8 per share per annum, as shall have been fixed by the Board of Directors, to accrue in respect of each series from a date to be determined as hereinafter provided; and

(b) the amount per share which the preferred stock shall be entitled to receive as a premium in case of the redemption thereof, or of the voluntary liquidation, dissolution or winding up of this Corporation or reduction of its capital stock resulting in a distribution of assets, in the case of the preferred stock of the original series shall be \$15 per share, and in the case of each other series shall be such amount, if any, not exceeding \$15 per share, as shall have been fixed by the Board of Directors.

The description and terms of the preferred stock of each series in the foregoing particulars (except as in this Article fixed in respect of the original series) shall be fixed and determined by the Board of Directors at the time of the authorization of the issue of the original shares of each such series and shall be expressed in the certificates therefor. All shares of each series shall be alike in every particular.

II. Out of the surplus or net profits of this Corporation, as and when declared by the Board of Directors, the holders of the preferred stock of each series shall be entitled to receive dividends at, but not exceeding, the maximum dividend rate fixed for such series and expressed in the certificates therefor, payable quarterly on January 1, April 1, July 1 and October 1 in each year, in the case of the original series from April 1, 1925, and in the case of each other series from the quarterly dividend payment date on or next preceding the date on which the first shares of such series shall have been issued, before any dividends shall be declared or paid upon or set apart for the common stock, and before any sum shall be paid or set apart for the purchase or redemption of preferred stock of any series; and such dividends on the preferred stock shall be cumulative, so that if in any dividend period or periods full dividends upon the outstanding preferred stock of each series at the maximum rate fixed therefor shall not have been paid, the deficiency shall be declared and paid or set apart for payment before any dividends shall be declared or paid upon or set apart for the common stock, and before any sum shall be paid or set apart for the purchase or redemption of preferred stock of any series. If at any time preferred stock of more than one series shall be outstanding, any dividends paid upon the preferred stock, in an amount less than full cumulative dividends accrued or in arrears upon all preferred stock outstanding, shall be divided between the outstanding series in proportion to the aggregate amounts which would be distributable to the preferred stock of each series if full cumulative dividends were declared and paid thereon. Dividends on all shares of the preferred stock of each series

shall be cumulative from the same date, but in the event of the issue of additional shares of preferred stock of any series subsequently to April 1, 1925, in the case of the original series, or subsequently to the date of the first issue of shares of such series in the case of any other series all dividends paid on the preferred stock of such series prior to the issue of such additional shares, and all dividends declared and payable to holders of record of preferred stock of such series of a date prior to such issue, shall be deemed to have been paid in respect of the additional shares so issued.

III. Out of any surplus or net profits of this Corporation remaining after full cumulative dividends as aforesaid upon the preferred stock of all series then outstanding shall have been paid for all past dividend periods, and after full dividends on the preferred stock for the current dividend period shall have been declared and paid or set apart for payment, and after making such provision, if any, as the Board of Directors may deem necessary for working capital, then, and not otherwise, dividends may be declared and paid upon the common stock, to the exclusion of the holders of the preferred stock. The right to receive any dividends which may be declared payable in stock of any class is vested in the holders of the common stock exclusively, but no such dividend shall be declared in any dividend period unless full cumulative dividends upon the preferred stock of all series then outstanding shall have been paid for all past dividend periods and shall have been declared and paid or set apart for payment for the current dividend period.

IV. The preferred stock shall be preferred as to both earnings and assets, and in the event of any liquidation, dissolution or winding up of this Corporation, or any reduction of its capital stock, resulting in a distribution of any of its assets to its stockholders, the holders of the preferred stock of each series shall be entitled to receive, for each share thereof, an amount equal to \$100 per share, plus, in case such liquidation, dissolution or winding up or reduction shall have been voluntary, a premium of such additional amount per share, if any, as shall have been fixed for such series and expressed in the certificates therefor, together in all cases with all dividends accrued or in arrears thereon, before any distribution of the assets shall be made to the holders of the common stock; but the holders of the preferred stock shall be entitled to no further participation in such distribution; and the holders of the common stock shall be entitled, to the exclusion of the holders of the preferred stock, to share ratably in all assets of this Corporation remaining after payment to the holders of the preferred stock of the full preferential amounts aforesaid. If upon any such liquidation, dissolution or winding up of this corporation, or reduction of its capital stock, the assets distributable among the holders of the preferred stock shall be insufficient to permit the payment in full to such holders of the preferential amounts aforesaid, then the entire assets of this Corporation to be distributed shall be distributed among the holders of the preferred stock then outstanding, ratably in proportion to the full preferential amounts to which they are respectively entitled. As used in this article the expression "dividends accrued or in arrears"

means, in respect of each share of the preferred stock, an amount equal to simple interest upon the sum of \$100 per share at an annual rate equal to the maximum dividend rate fixed for such series from the date from which dividends thereon commenced to accrue to the date as of which the computation is to be made, less the aggregate amount (without interest thereon) of all dividends theretofore paid (or deemed to have been paid) or declared and set aside for payment in respect thereof. Nothing in this paragraph shall be deemed to prevent the purchase or redemption of preferred stock in any manner permitted by Paragraph V. A consolidation or merger of this Corporation with any other corporation or corporations shall not be regarded as a liquidation, dissolution or winding up of this Corporation within the meaning of this paragraph, but no such consolidation or merger shall in any way impair the rights and preferences of the preferred stock.

V. This Corporation may, at its option, from time to time on any dividend payment date, redeem the whole or any part of the preferred stock or of any series thereof, at a price for each series thereof equal to \$100 per share, plus a premium of such additional amount per share, if any, as shall have been fixed as payable in case of redemption in respect of such series and expressed in the certificates therefor, together with the amount of any dividends accrued or in arrears thereon. Notice of any proposed redemption of preferred stock shall be given by this corporation by mailing a copy of such notice, at least thirty (30) days prior to the date fixed for such redemption, to the holders of record of the preferred stock to be redeemed, at their respective addresses appearing on the books of this Corporation, and also, if so expressed in the certificates for the preferred stock to be redeemed or in the by-laws of this Corporation, by publication in such manner as shall have been so expressed. Any such redemption of preferred stock shall be in such amount and at such place and by such method, whether by lot or pro rata, as shall have been fixed by the Board of Directors and expressed in the certificates therefor, or, if not so fixed and expressed, then as shall from time to time be provided by the by-laws of this Corporation or be determined by resolution of its Board of Directors. From and after the date fixed in any such notice as the date of redemption, unless default shall be made by this Corporation in providing moneys at the time and place specified for the payment of the redemption price pursuant to said notice, all dividends on the preferred stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of this Corporation, except the right to receive the redemption price, shall cease and determine. This Corporation shall also have power, from time to time, to purchase for retirement, either at public or private sale, the whole or any part of the preferred stock or of any series thereof upon the best terms reasonably obtainable, but in no event at a price in respect of any shares of preferred stock greater than the redemption price fixed for the series of which they are a part. Such redemption or purchase for retirement may be effected by payment out of the surplus or net profits arising from the business of this Corporation

remaining after full cumulative dividends to the date of such redemption or purchase, upon all shares of the preferred stock then outstanding and not then to be redeemed or purchased, shall have been paid or set apart for payment. This Corporation may also, if and in such manner as may from time to time be permitted by law, redeem and/or purchase for retirement the whole but not a part of the preferred stock of any series out of the proceeds of common stock and/or one or more other series of preferred stock issued for the purpose. Preferred stock purchased or redeemed pursuant to this paragraph shall not be re-issued and such stock shall be retired from time to time in the manner provided by law.

VI. Unless with the affirmative vote or written consent of the holders of at least eighty per cent of the shares of preferred stock at the time outstanding (in addition to any other vote or consent at the time required by law), this Corporation shall not:

(1) authorize or issue any stock or class of stock having priority or preference over the preferred stock as to earnings or assets; or

(2) amend the provisions of this article so as to alter or change the preferences hereby given to the preferred stock, provided that nothing herein contained is intended or shall be deemed to limit the right of this Corporation to increase from time to time the number of shares of preferred stock authorized in the manner provided by law; or

(3) after the issuance of the first 60,000 shares of preferred stock, issue any additional preferred stock unless, prior to the adoption of the resolution of the Board of Directors authorizing each such additional issue thereof, the Treasurer or Assistant Treasurer of this Corporation shall have certified to said board, and each such resolution shall declare it to be the opinion of the Board of Directors, that the net earnings of this Corporation, after deducting taxes, interest and operating expenses, including in operating expenses proper charges for maintenance, renewals and replacements of this Corporation's property, but excluding amounts reserved for depreciation thereof and all amortization charges, for twelve consecutive calendar months out of the fifteen calendar months next preceding the issue of said additional preferred stock, shall have been not less than twice the annual dividend requirements upon the preferred stock of this corporation already issued and then outstanding and that proposed to be issued.

VII. Except as herein otherwise expressly provided, or as otherwise required by the laws of Delaware, the holders of the common stock shall exclusively possess all voting power for the election of directors and for all other purposes, and the holders of the preferred stock shall have no voting power and no owner or holder thereof shall vote thereon or be entitled to receive notice of any meeting of the stockholders; provided, that if at any time dividends in respect of any series of the preferred stock shall be in arrears to an amount equal to or exceeding the maximum dividend thereon for one year at the rate fixed for such series, then so long as there shall be any arrears of dividends upon any of the preferred stock of any series, the holders of the preferred stock shall be entitled, voting

separately as a class and to the exclusion of the holders of the common stock, to vote for the election of two of the directors of this Corporation. If at any time after the holders of preferred stock shall have become entitled to vote as aforesaid, all arrears of dividends on all of the preferred stock shall have been declared and paid or set apart for payment by this Corporation, thereupon all powers of the holders of the preferred stock to vote for the election of directors shall cease, subject, however, to being again revived whenever this Corporation shall be in arrears in respect of dividends on any of the preferred stock to the amount aforesaid. The directors elected by the vote of the holders of the preferred stock shall be subject to removal only by vote of the holders of a majority of the shares of preferred stock at the time outstanding so long as the voting rights of the holders of the preferred stock shall continue; but if, at any time before the term of office of such directors shall have expired, the holders of the preferred stock shall cease to be entitled to vote for the election of two directors, then the terms of office of such directors shall expire upon the election of successors to them by vote of the holders of the common stock, at any annual or special meeting of the stockholders. In case the holders of the preferred stock shall at any time become entitled to vote as aforesaid, upon the written request of the holder or holders of record of not less than 10% of the shares of preferred stock then outstanding, a special meeting of the holders of preferred stock shall be called by the Secretary of this Corporation upon the notice provided in the by-laws for the annual meeting of the stockholders, or, in default of the calling of said meeting by the Secretary of this Corporation within five days after the making of such request, such meeting may be called by any holder of record of preferred stock. A quorum at said meeting shall consist of a majority of the outstanding shares of preferred stock of this Corporation. At said meeting the holders of the preferred stock, by vote of a majority of the shares represented at said meeting, may elect two persons to be directors of this Corporation until the next annual election of directors and until their successors shall be elected and qualify; and, except as vacancies shall exist in the Board of Directors at the time of said meeting, said holders of preferred stock may elect said persons as the successors to any two directors of this Corporation then in office specified by said preferred stockholders, as the case may be, and immediately upon the qualification of the directors so elected by the holders of preferred stock the term of office of the previous directors in succession to whom they shall have been elected shall expire; provided, that the holders of a majority of the outstanding shares of common stock shall have the right, by an instrument or instruments in writing, delivered to the Secretary of this Corporation prior to such election by the holders of preferred stock, to designate the directors in succession to whom directors shall be elected by the holders of the preferred stock. At all times each holder of stock of this Corporation of any class which shall at the time possess voting power for any purpose shall be entitled to one vote for each share of such stock standing in his name on the books of this Corporation.

VIII. No holder of stock of this Corporation of any class shall have any preemptive or preferential right of subscription to any shares of any class of stock of this Corporation, whether now or hereafter authorized, or to any obligations convertible into stock of this Corporation, issued or sold, nor any right of subscription to any thereof other than such, if any, as the Board of Directors in its discretion may from time to time determine, and at such price as the Board of Directors may from time to time fix pursuant to the authority conferred by this certificate; and any shares of stock or convertible obligations which the Board of Directors may determine to offer for subscription to the holders of stock may, as said board shall determine, be offered exclusively either to holders of preferred stock or to holders of common stock or partly to the holders of preferred stock and partly to the holders of common stock, and in such case in such proportions as between said classes of stock as the Board of Directors in its discretion may determine.

IX. The capital stock of this Corporation without nominal or par value, whether common or preferred, may be issued by this Corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors.

Fifth: The number of shares with which this Corporation will commence business is ten (10) shares of common stock without any nominal or par value.

Sixth: The names and places of residence of each of the original subscribers to the capital stock of this Corporation are as follows:

John R. Hall.....	Wilmington, Delaware.....	4
A. G. Hunter.....	Wilmington, Delaware.....	3
Harry Jones	Wilmington, Delaware.....	3

Seventh: The existence of this Corporation is to be perpetual.

Eighth: The private property of the stockholders of this Corporation shall not be subject to the payment of corporate debts to any extent whatever.

Ninth: The number of directors of this Corporation shall be fixed and may be altered from time to time as may be provided in the by-laws. In case of any increase in the number of directors the additional directors may be elected by the Board of Directors to hold office until the next annual meeting of the stockholders and until their successors are elected and qualified. In case of vacancies in the Board of Directors the latter may elect directors to fill such vacancies. Subject to the provisions of Paragraph VII of Article Fourth hereof, any director may by a vote of a majority of the directors for any cause deemed by them sufficient be removed as such director and any director may also be removed by the stockholders at any annual or special meeting thereof for any cause deemed sufficient by such meeting. Directors of this Corporation need not be stockholders therein.

Tenth: In furtherance and not in limitation of the powers conferred by statute the Board of Directors is expressly authorized:

(a) To fix, determine and vary from time to time the amount to be maintained as surplus and the amount or amounts to be set apart as working capital.

(b) To make, amend, alter, change, add to or repeal by-laws for this Corporation, without any action on the part of the stockholders. The by-laws made by the directors may be amended, altered, changed, added to or repealed by the stockholders.

(c) By resolution passed by a majority of the whole Board, to designate three or more directors to constitute an Executive Committee which committee shall have and exercise (except when the Board of Directors shall be in session) such powers and rights of the Board of Directors in the management of the business and affairs of this Corporation as may be provided in the by-laws or in said resolution, and shall have power to authorize the seal of this Corporation to be affixed to all papers which may require it.

(d) To authorize and cause to be executed mortgages and liens, without limit as to amount, upon the real and personal property of this Corporation.

(e) From time to time to determine whether and to what extent, at what time and place, and under what conditions and regulations the accounts and books of this Corporation or any of them, shall be open to the inspection of any stockholder; and no stockholder shall have any right to inspect any account or book or document of this Corporation except as conferred by statute or the by-laws, or as authorized by a resolution of the stockholders or Board of Directors.

(f) To sell, assign, convey and otherwise dispose of a part of the property, assets and effects of this Corporation less than the whole or less than substantially the whole thereof, on such terms and conditions as they shall deem advisable, without the assent of the stockholders in writing or otherwise; and also to sell, assign, transfer, convey and otherwise dispose of the whole or substantially the whole of the property, assets, effects, franchises and good-will of this Corporation on such terms and conditions as they shall deem advisable, but only with the assent in writing or pursuant to the affirmative vote of the holders of not less than a majority in interest of the common stock then outstanding, but in any event not less than the amount required by law.

(g) All of the powers of this Corporation, in so far as the same lawfully may be vested by this certificate in the Board of Directors, are hereby conferred upon the Board of Directors of this Corporation.

Eleventh: In the absence of fraud, no contract or transaction between this Corporation and any other association or corporation shall be affected by the fact that any of the directors or officers of this Corporation are interested in or are directors or officers of such other association or corporation, and any director or officer of this Corporation individually may be a party to, or may be interested in any such contract or transaction of this Corporation; and no such contract or transaction of this Cor-

poration with any person or persons, firm, association or corporation, shall be affected by the fact that any director or officer of this Corporation is a party to, or interested in, such contract or transaction, or in any way connected with such person or persons, firm, association or corporation; and each and every person who may become a director or officer of this Corporation is hereby relieved from any liability that might otherwise exist from thus contracting with this Corporation for the benefit of himself or any person, firm, association or corporation in which he may be in any wise interested.

Twelfth: This Corporation may in its by-laws fix the number (not less than the number required by law or in this certificate) of shares, the holders of which must consent to, or which must be voted in favor of, any specific act or acts by this Corporation, or its Board of Directors or Executive Committee, and during the period for which such number remains so fixed, such specified act or acts shall not and may not be performed or carried out by this Corporation, or its Board of Directors or Executive Committee without the consent or affirmative vote of the holders of at least the number of shares so fixed. Nothing contained in this certificate shall prevent the Board of Directors of this Corporation at any time from requesting or obtaining the vote or consent of the holders of preferred stock whenever it may become necessary or desirable in the judgment of said Board to obtain the vote or consent of a specified percentage of the outstanding capital stock of this Corporation, without regard to the classification thereof; but nothing herein shall, or is intended to, authorize or empower the Board of Directors to waive, relinquish or impair the voting and other rights by this certificate conferred upon the holders of the common stock, or to make the validity of any action taken or proposed to be taken by this Corporation dependent upon the favorable vote or consent of holders of preferred stock in any case where such vote or consent is not actually required by the provisions of Paragraphs VI and VII of Article Fourth of this certificate or by the laws of the State of Delaware.

Thirteenth: Except where other notice is specifically required by statute written notice only of any stockholders' meeting given as provided in the by-laws shall be sufficient without publication or other form of notice.

Fourteenth: Any officer or agent elected, or appointed by the Board of Directors, or by the Executive Committee, or by the stockholders, or any member of the Executive Committee, or of any other committee, may be removed at any time, with or without cause, in such manner as shall be provided in the by-laws of this Corporation.

Fifteenth: This Corporation may in its by-laws make any other provisions or requirements for the management or conduct of the business of this Corporation, provided the same be not inconsistent with the provisions of this certificate, or contrary to the laws of the State of Delaware or of the United States.

Sixteenth: This Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this certificate of incorporation (subject to the provisions of Paragraph VI of Article Fourth hereof), in

the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted subject to this reservation; provided, however, that wherever in this certificate or by the law of Delaware the written consent or affirmative vote is required of the holders of a designated proportion of any class or classes of the stock of this Corporation to any specified act or thing, then and in that event any amendment, alteration, change, addition to, or repeal of, any such provision shall require the written consent or affirmative vote of the holders of said designated proportion of the stock of this Corporation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named, for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereto and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this 18th day of April, A. D. 1925.

In the presence of

JOHN R. HALL, (Seal)

A. G. HUNTER (Seal)

HARRY JONES (Seal)

State of Delaware, }
County of New Castle, } ss.

BE IT REMEMBERED that on this 18th day of April, A. D. 1925, personally came before me,, a Notary Public for the State of Delaware, John R. Hall, A. G. Hunter, and Harry Jones, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, I having first made known to them and to each of them the contents of said certificate, and they did severally acknowledge that they signed, sealed and delivered said certificate as their several voluntary act and deed, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

.....
Notary Public, County of New Castle, State of Delaware.

.....
Notary Public.
Appointed
State of Delaware
Term Two Years

§ 117. Articles of Incorporation of Railroad Company.

KNOW ALL MEN BY THESE PRESENTS:

The we, E. P. Jones, M. L. Bennett, Asa Roberts, James Willard, and A. J. Knox, citizens of the United States and residents of the State of

....., have this day voluntarily associated ourselves together for the purpose of incorporating under the laws of the State of and in the manner prescribed in the Civil Code of said State, a corporation, and we do hereby certify:

First.—That the name of said corporation shall be The Excelsior and Air Line Railway Company;

Second.—That the purposes for which said corporation is formed, are: To purchase, construct, maintain, operate and conduct a railroad of standard gauge, in the State of, to be operated by steam, electricity or any other motive power, for the carrying of passengers and freight thereon and thereover for hire, with all the necessary tracks, side-tracks, spur-tracks and equipments for the same, also, to construct, purchase, own and maintain a public and private telegraph and telephone line, or either of such lines, along the line of said proposed railroad, with the same termini as said railroad, and to operate the same and the business thereof; and to lease said telegraph and telephone lines, or either of them, to other persons or individuals, or to contract with other persons or individuals for the construction, operation and maintenance thereof, or of either thereof, or for either such construction, operation or maintenance of said telegraph and telephone lines, or either of them; and to buy, build, maintain, operate, run, and conduct steam-boats and ferry-boats for the transportation of passengers and freight, and to carry on a general express business in connection with the operation of said railroad; and to have and exercise such other powers as any railroad company may be allowed by law to exercise at present or in the future; with full power to issue its stock in accordance with its by-laws and the laws of the State of.....; and to borrow money and issue bonds upon its road and property; and, in connection with said railroad and steam-boats, to run and operate vessels and barges, with full power to purchase and build wharves, docks and landings, and to buy or otherwise acquire all real estate necessary and proper for the exercise of the powers of said corporation; and, to purchase, construct, own or lease warehouses, station buildings, engine houses, coal chutes, machine and car-shops as may be deemed necessary for the carrying on of the business of said Company and the business of a common carrier; and to obtain and receive gifts of real and personal property, and subscriptions towards the building of its road; and to purchase, construct, own, maintain and operate, in conjunction with said railroad, such branch and side lines and railroads between said railroad and such points as the Board of Directors of said company may from time to time determine to be necessary for the business of said road.

Third.—The said railroad is to be constructed from the City of Excelsior, or some point on the Bay of, or the waters discharging into it, in the State of, generally eastwardly and southwardly by a practicable route to a point in the vicinity of the City of Shoreham, in the County of, in said State; together with a branch line extending from said railroad at a point in County, known as Gundlach, in a southeasterly

direction through the County of to Smithtown, and thence into and through the County of in a southerly direction to Jonesborough, and thence in a southwesterly direction in said County through and into and through the County of to the town of Portsmouth, where said branch is to connect again with the said line of railroad, all in the State of

Fourth.—That the estimated length of said railroad is 350 miles and that the estimated length of said telegraph and said telephone line is 350 miles; and that the estimated length of said branch line from Gundlach, by way of Jonesborough to Portsmouth, is 68.6 miles, and that the estimated length of telegraph and telephone line along said branch lines of railroad, is 68.6 miles.

Fifth.—That the place where the principal business of said corporation is to be transacted is the City of Excelsior, in the State of

Sixth.—That the term for which said corporation is to exist is ninety-nine (99) years.

Seventh.—That the number of Directors of said corporation shall be eleven (11), and the names and residences of those who are appointed for the first year are:

Name.	Residence.
E. P. Jones.....	Excelsior, .....County, State of.....
M. L. Bennett.....	Excelsior, .....County, State of.....
Asa Roberts.....	Excelsior, .....County, State of.....
James Willard.....	Excelsior, .....County, State of.....
A. J. Knox.....	Excelsior, .....County, State of.....
Geo. D. Hendlershot.	Gundlach, .....County, State of.....
S. P. Quay.....	Shoreham, .....County, State of.....
Oscar T. Gray.....	Shoreham, .....County, State of.....
August Heinze.....	Belton, .....County, State of.....
Saml. Goldstone....	Smithtown, .....County, State of.....
D. Maginnis	Portsmouth, .....County, State of.....

Eighth.—That the capital stock of said corporation shall be six million dollars (\$6,000,000), divided into sixty thousand (60,000) shares, of the par value of one hundred dollars (\$100) each.

Ninth.—That the amount of the capital stock actually subscribed is the sum of one million seven hundred and forty-six thousand five hundred dollars (\$1,746,500), and the same has been subscribed by the following persons, and in the amounts set opposite their names respectively, to wit:

Name.	Number of Shares.	Amount Subscribed.
E. P. Jones.....	5,000	\$500,000
(Here insert other subscriptions.)		

Tenth.—That before the filing of these Articles of Incorporation there was actually subscribed to the capital stock of said Company, for each mile of railroad intended to be constructed or purchased by said corpora-

tion, the sum of one thousand dollars (\$1,000), and there has been paid for the benefit of the corporation to the Safe and Security Bank, a corporation, as Treasurer elected by the subscribers, ten (10) per cent of the amount subscribed.

Eleventh.—That before the filing of these Articles of Incorporation, there was actually subscribed to the capital stock of said Company, for each mile of said telegraph and telephone line intended to be constructed or purchased by said corporation, the additional sum of one hundred dollars (\$100), and there has been paid for the benefit of the corporation to the Safe and Security Bank, a corporation, as Treasurer elected by the subscribers, ten (10) per cent of the amount subscribed.

In Witness Whereof, we have hereunto set our hands and seals, this twenty-fifth day of February, in the year of our Lord, one thousand nine hundred and nineteen.

E. P. JONES, (Seal.)

M. L. BENNETT, (Seal.)

ASA ROBERTS, (Seal.)

JAMES WILLARD, (Seal.)

A. J. KNOX, (Seal.)

(Here follows acknowledgment.)

State of }
County of } ss.

Joseph Jenkins, being duly sworn on oath, says: That he is the duly elected, qualified and acting President of the Safe and Security Bank, a corporation, which has been elected Treasurer by the subscribers of the stock of The Excelsior and Air Line Railroad Company, mentioned in the foregoing Articles of Incorporation, and that the required amount of the capital stock thereof, to wit, one thousand dollars (\$1,000) per mile, for each mile of railroad, has been actually subscribed, and ten (10) per cent thereof, viz., more than the sum of seventy-five thousand dollars actually paid to the said corporation, the Safe and Security Bank, as Treasurer for the benefit of the corporation, The Excelsior and Air Line Railway Company, and that an additional ten (10) per cent thereof, viz., more than the sum of twenty-five thousand dollars actually paid to the said corporation, the Safe and Security Bank, as Treasurer for the benefit of said corporation, The Excelsior and Air Line Railway Company.

JOSEPH JENKINS.

Subscribed and sworn to before me, this 25th day of February, A. D. 1926.

GEO. M. GUNDERSON,

Notary Public,

(Seal.)

In and for the County of

State of

§ 118. Articles of Incorporation of a Securities Company.**KNOW ALL MEN BY THESE PRESENTS:**

That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California,

AND WE HEREBY CERTIFY:

First.—That the name of said corporation shall be the Royal Securities Company.

Second.—That the purposes for which it is formed are:

To buy, sell, negotiate, pledge, trade, and deal in and with shares, stocks, debentures, scrip, bonds, and securities of any government, state, or public or private corporation or any corporate body; to mortgage, pledge, or otherwise change all or any part of the investments of the company or its property and rights; or to act as agent, factor, or broker for any or either of the corporate purposes. To purchase or otherwise acquire the capital stock, shares, debentures, scrip, bonds, or other evidences of indebtedness of any other corporation, and to issue in exchange its own stock, shares, bonds, debentures, scrip, or other evidences of indebtedness in payment therefor, and while the owner thereof to exercise all the rights of ownership, including the power to vote upon such stock or shares. To purchase, receive, hold and own mortgages, debentures, shares, and other securities or obligations of any public, private, or municipal corporation, or bonds, or other securities or obligations of the government of the United States, or of any state, district, territory, colony, or dependency of the United States or any foreign country, state, or colony; to collect and receive, disburse and dispose of, all interests, dividends, accumulations, earnings, and income from, upon, or on account of any bonds, debentures, stocks, shares, securities, contracts, evidences of indebtedness, obligations, or other property held or owned by the corporation therein; to do any and all lawful acts tending to increase or enhance the value of the property of the company. To issue stock, shares, bonds, debentures, certificates, scrip, or other corporate obligations and to secure the payment thereof by mortgage, pledge or deed of trust of or upon the whole or any portion of the corporate property or funds; to sell, pledge, or otherwise dispose of bonds, debentures, or other corporate obligations for proper and lawful purposes, as and when the Board of Directors shall deem necessary, advisable or expedient; and to receive, collect, transmit, pay out, and disburse funds in the course of its business; and to the extent authorized by law to lease, purchase or otherwise acquire, hold, use, sell, trade, and deal in and with, assign, pledge, mortgage, transfer and convey real and personal property of any name or nature; and to carry on a general brokerage business and in general to do all things necessary to the proper conduct of the business of this corporation within the State of California or elsewhere, not inconsistent with the laws of the United States and of the State of California,

Third.—That the place where the principal business of said corporation is to be transacted is the City of Los Angeles, California.

Fourth.—That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

Fifth.—That the number of directors or trustees of said corporation shall be five (5) and that the names and residences of directors or trustees, who are appointed for the first year, and to serve until the election and qualification of such officers, are as follows, to wit:

Names.	Whose residence is at.
R. H. Blakesley.....	Los Angeles, California
L. Blum	Los Angeles, California
C. P. Williams.....	Los Angeles, California
Chas G. Benson.....	Los Angeles, California
T. S. Hodson.....	Los Angeles, California

Sixth.—That the amount of the capital stock of said corporation is one million dollars (\$1,000,000), and the number of shares into which it is divided is one million shares of the par value of one dollar (\$1) each.

Seventh.—That the amount of said capital stock which has been actually subscribed is five hundred dollars (\$500), and the following are the names of the persons by whom the same has been subscribed, to wit:

Names of Subscribers.	No. of Shares.	Amount.
R. H. Blakesley	100	\$100.00
L. Blum	100	100.00
C. P. Williams.....	100	100.00
Chas. G. Benson.....	100	100.00
T. S. Hodson.....	100	100.00

In Witness Whereof, we have hereunto set our hands and seals this 21st day of October, A. D. 1926.

(Acknowledgment.)

R. H. BLAKESLEY, (Seal.)
 L. BLUM, (Seal.)
 C. P. WILLIAMS, (Seal.)
 CHAS. G. BENSON, (Seal.)
 T. S. HODSON. (Seal.)

§ 119. Articles of Incorporation of an Elevator Company.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, a majority of whom are residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California. We hereby certify

First.—That the name of said corporation shall be Crescent Elevator Company.

Second.—That the purposes for which said corporation is formed are:

To buy, sell and manufacture iron, steel, manganese and copper and all other metals, articles and materials required or used in the manufacturing and particularly to manufacture, buy and sell elevators and materials used in connection therewith and to buy, manufacture and use all machinery, tools and implements necessary for any of the purposes aforesaid.

To construct buildings, engines, boats, cars, water works, and gas and electric works for the generating and producing of light, heat and power, and to maintain, operate, lease or sell the same and to use gas and electricity for light, heat or power and for manufacturing purposes.

To buy, sell, mortgage, pledge, lease, rent, improve, develop, use and deal in real estate, goods, wares, merchandise and property of every kind and description, whether situate or located within or without the State of California, to the same extent as natural persons might or could do.

To acquire the good will of any business or corporation, and rights, properties, patents, grants and concessions, trade-marks, trade names, distinctive marks, processes and patents and other property rights; to hold, use, operate under and sell the same and to grant licenses for using the same.

To purchase, subscribe for or otherwise acquire, hold as pledge for loans of money or other purposes, and sell the shares, stocks, debentures or obligations or any interest or participation therein of any corporation organized under the laws of this state or of any other state or of any territory or colony of the United States or of any foreign country, and to sell and exchange the same and to exercise any and all of the powers of the owners or holders of such shares, stocks or securities, including the right to vote thereon and in respect thereof.

To make, enter into, carry out and perform contracts of every sort and kind, with any person, firm, association, joint stock company, corporation, public or private, municipal or body politic, and with the government of the United States or of any state, territory or colony thereof or of any foreign country.

To aid in any manner any corporation, any of whose shares of capital stock, bonds or other obligations are held or in any manner guaranteed by this company or any in whose business or property this company is, or may be in any way, interested, and to do any and all acts and things for the preservation, protection, improvement or enhancement of and value of such shares of capital stock, bonds, or obligations, so held, or the property represented thereby, or the interest of this company therein, and to further and otherwise facilitate the organization and operation of subsidiary or auxiliary companies, formed under the laws of this state, or any other state or territory or colony of the United States and in foreign countries.

To borrow or raise money without limit as to amount by the use or sale of bonds, notes or debentures of the company or otherwise; to make guarantees of every kind, and to secure any or all of the above obligations by mortgage or otherwise, and to do all and everything necessary, suitable or proper for attainment of any of the objects hereinbefore enumerated, either alone or with other corporations, firms, or individuals.

To cause or allow the legal titles, estate and interest of any property acquired, established, maintained, owned or operated by the company to be or remain vested or registered in the name of or carried on or operated by any other company or companies, foreign or domestic, formed or to be formed, and either upon trust for or as agents or nominees of this company, or by any other terms or conditions which the Board of Directors may consider for the benefit of this company and to manage the affairs or take over and carry on the business of any such companies so formed or to be formed, either by acquiring the shares, stocks or other securities thereof, or in any other manner and to exercise all or any of the powers of holders of shares, stocks or securities thereof, and to receive, distribute and dispose of as profits, dividends and interest on such shares, stocks or securities.

To do any and all things necessary, incidental or proper to carry into effect the foregoing powers, it being expressly provided that the foregoing enumerations of specific powers shall not be held to limit or restrict in any way the general powers of the company.

Neither the property nor the capital stock so acquired, nor any of its capital stock taken in payment or satisfaction of any debts due the corporation shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors or the owners of a majority of the stock of the company.

Third.—That the place where its principal business is to be transacted in the State of California shall be the City and County of San Francisco.

Fourth.—That the term for which the corporation is to exist is fifty (50) years from and after the date of its incorporation.

Fifth.—That the number of its Directors shall be five and that the names and residences of the Directors and trustees who are appointed for the first year to serve until the election and qualification of such officers, are as follows, to wit:

Samuel Gillett.....	Oakland, California
Jos. Scholer	San Francisco, California
Angus McKenzie	San Francisco, California
Charles R. Waite.....	Oakland, California
Julius Braden	San Francisco, California

Sixth.—That the amount of capital stock of said corporation is five hundred thousand dollars (\$500,000), and the number of shares into which it is divided is five hundred thousand (500,000) shares at the par value of one dollar (\$1.00) each.

Seventh.—That the amount of capital stock which has been actually subscribed is five dollars (\$5) and the following are the names of the persons by whom the same has been subscribed, to wit:

Names.	No. of Shares.	Amount.
Samuel Gillett	1	\$1.00
Jos. Scholer	1	1.00
12—Corp. Management		

	No. of Shares	Amount.
Angus McKenzie	1	\$1.00
Charles R. Waite	1	1.00
Julius Braden	1	1.00

In Witness Whereof, we have hereunto set our hands and seals this 4th day of March, 1926.

SAMUEL GILLET, (Seal.)

JOS. SCHOLER, (Seal.)

ANGUS McKENZIE, (Seal.)

CHARLES R. WAITE, (Seal.)

(Acknowledgment.)

JULIUS BRADEN. (Seal.)

§ 120. Articles of Incorporation of Real Estate, Insurance, and Brokerage Business.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, a majority of whom are citizens and residents of the state of, have this day voluntarily associated ourselves together for the purpose of forming a corporation under and by virtue of the laws of the state of, and we hereby certify:

First.—That the name of said corporation shall be, inc.

Second.—That the purposes for which said corporation is formed are:

1. To buy, own, sell, mortgage, lease, and deal in real estate,
2. To build houses or other buildings of every kind and character, either for sale or lease or on contract or otherwise.
3. To lay out, subdivide, resubdivide and plat tracts of land and sell same, either by such subdivision or resubdivision.
4. To improve lands laid out, subdivided or resubdivided, grade, oil and improve streets, alleys, parks and other places, and sidewalk, curb and otherwise improve the same, and construct and maintain and operate sewers and any and all other conveniences and matters in connection therewith.
5. To act as agent for insurance companies in soliciting and receiving applications for fire, casualty, plate glass, boiler, elevator, accident, health, burglary, rent, marine, credit, life insurance and all other kinds of insurance, the collection of premiums and doing such other business as may be delegated to agents by such companies, and to conduct a general insurance agency and insurance brokerage business.
6. To loan money and generally to transact such other business as may be necessary or proper to carry out the purposes of said corporation, and to promote either its interests or the interests of its stockholders.
7. To borrow money, execute notes, and deeds, and contracts and mortgages, and to mortgage, to pledge, to bond, to lease, and to hypothecate any and all of its real and personal property to secure the payment of any and all sums of money borrowed by said corporation and as security for any obligation which said corporation may incur.
8. To do each and everything suitable, necessary or proper for the

accomplishment, protection or maintenance of any of the purposes or the attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of said corporation, either as holders or owners of or interested in any property, it being the intention that the objects, purposes and powers specified herein, except where otherwise expressed herein, be in no wise limited or restricted by reference to or in reference from the terms of any other clause or any other paragraph in this instrument, but that the objects, purposes and powers specified in each of the clauses of this instrument shall be regarded as independent objects, purposes and powers.

9. To conduct said business above specified in any and all of its branches and ramifications and to do such business in any and all places in the United States and in the territories of the United States and all foreign countries, either as principal, agent, or director, or otherwise.

Third.—That the place where the principal business of said corporation is to be located in the city of, county of, state of

Fourth.—That the term for which said corporation is to exist is fifty (50) years from and after the date of this incorporation.

Fifth.—That the board of directors of said corporation shall be three (3), and that the names and residences of said directors who are appointed for the first year and to serve until the election and qualification of such officers, are as follows:

Name.	Residence.
.....,,
.....,,
.....,,

Sixth.—That the amount of the capital stock of said corporation is twenty-five thousand dollars (\$25,000), and the number of shares into which it is divided is two hundred and fifty (250) of the par value of one hundred dollars (\$100) each.

Seventh.—That the amount of said capital stock which has been actually subscribed is three hundred dollars (\$300), and the following are the names of the persons by whom the same has been subscribed, to wit:

Name.	No. of Shares.	Amount.
.....	One (1)	\$100.00
.....	One (1)	\$100.00
.....	One (1)	\$100.00

In Witness Whereof, we have hereunto set our hands and seals upon this day of, 19....

*

(Acknowledgment.)

.....

§ 121. Arizona Articles of Incorporation.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, do hereby associate ourselves for the purpose of forming a corporation under the laws of Arizona and adopt the following Articles of Incorporation:

Article I. The incorporators are:

.....
 (Name.)

 (Postoffice address.)

 (Name.)

 (Postoffice address.)

 (Name.)

 (Postoffice address.)

and the name of the corporation shall be
 Its principal place of business within Arizona shall be, but other offices may be established and maintained within or outside of Arizona at such places as the Board of Directors may designate, where meetings of stockholders and directors may be held and any and all corporate business transacted.

Article II. The general nature of the business proposed to be transacted is, to wit: (Insert business to be transacted.)

Article III. The capital stock of the corporation shall be dollars (\$.....), divided into shares of the par value of dollars each, which shall be paid in, at such time as the Board of Directors may designate, in cash, real or personal property, services, lease, option to purchase, or any other valuable right or thing, for the uses and purposes of the corporation, and all shares of capital stock, when issued in exchange therefor, shall thereupon and thereby become and be full-paid the same as though paid for in cash at par, and shall be non-assessable forever, and the judgment of the directors as to the value of any property, right or thing acquired in exchange for capital stock shall be conclusive.

Article IV. The commencement of the corporation shall be the date of the issuance to it of a certificate of incorporation by the Arizona Corporation Commission, and it shall endure for the full term of twenty-five years thereafter, with privilege of perpetual succession as provided by statute.

Article V. The affairs of the corporation shall be conducted by a board of directors and such officers as the said directors may elect or appoint.

The number of directors shall be designated by the by-laws and shall be elected from among the stockholders at their annual meeting to be held on the in of each year. Until the first annual meeting of the stockholders and until their successors have been elected and have qualified, the following named persons shall be the officers and directors:

Article VI. The directors shall have power to adopt, amend and rescind by-laws, to fill vacancies occurring in the board from any cause, and to appoint from their own number an executive committee and vest said committee with all the powers granted the directors by these articles.

Article VII. The highest amount of indebtedness or liability to which the corporation may at any one time subject itself is dollars (\$.....).

Article VIII. The private property of the stockholders of the corporation shall be forever exempt from its debts or obligations.

Article IX. This corporation does hereby appoint of, who has been a bona fide resident of Arizona for at least three years, its lawful agent in and for the State of Arizona for and in behalf of said company, to accept and acknowledge service of, and upon whom may be served all necessary process or processes in any action, suit or proceeding that may be had or brought against the said company in any of the courts of said State of Arizona, such service of process or notice, or the acceptance thereof by said agent endorsed thereon, to have the same force and effect as if served upon the president and secretary of said company.

In Witness Whereof, we hereto affix our signatures this day of, A. D. 19.....

..... (Seal.)

..... (Seal.)

State of } ss.
County of

Before me,, a notary public in and for the county and state aforesaid, on this day personally appeared, known to me to be the same persons who signed the foregoing instrument, and acknowledged to me that they executed the same for the uses and purposes therein mentioned.

Given under my hand and seal of office this day of, A. D. 19.....

My commission will expire on the day of, A. D. 19.....

.....

Notary Public.

§ 122. Delaware Certificate of Incorporation.

CERTIFICATE OF INCORPORATION OF

.....
First.—The name of this Corporation is

Second.—Its principal office and place of business in the State of Delaware is to be located in, County of
The agent in charge thereof is at

Third.—The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on, are to do any or all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

IN FURTHERANCE AND NOT IN LIMITATION of the general powers conferred by the laws of the State of Delaware, and the objects and purposes herein set forth, it is expressly provided that this corporation shall also have the following powers, viz:

To take, own, hold, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of real property, within or without the State of Delaware, wherever situated.

To manufacture, purchase or acquire in any lawful manner and to hold, own, mortgage, pledge, sell, transfer, or in any manner dispose of, and to deal and trade in goods, wares, merchandise, and property of any and every class and description, and in any part of the world.

To acquire the good will, rights and property, and to undertake the whole or any part of the assets or liabilities of any person, firm, association or corporation; to pay for the same in cash, the stock of this company, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

To apply for, purchase, or in any manner to acquire, and to hold, own, use, and operate, and to sell or in any manner dispose of, and to grant license or other rights in respect of, and in any manner deal with, any and all rights, inventions, improvements and processes used in connection with or secured under letters patent or copyrights of the United States or other countries, or otherwise, and to work, operate or develop the same, and to carry on any business, manufacturing or otherwise, which may directly or indirectly effectuate these objects or any of them.

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this State or any other State, country, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as natural persons might or could do.

To enter into, make and perform contracts of every kind with any person, firm, association or corporation, municipality, body politic, county, territory, State, government or colony or dependency thereof, and without limit as to amount to draw, make, accept, endorse, discount, execute, and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments and evidences of indebtedness whether secured by mortgage or otherwise, as well as to secure the same by mortgage or otherwise, so far as may be permitted by the laws of the State of Delaware.

To have offices, conduct its business and promote its objects within and without the State of Delaware, in other States, the District of Columbia, the territories and colonies of the United States, and in foreign countries, without restriction as to place or amount.

To do any or all of the things herein set forth to the same extent as natural persons might or could do and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and either alone or in company with others.

IN GENERAL to carry on any other business in connection therewith, whether manufacturing or otherwise, not forbidden by the laws of the State of Delaware, and with all the powers conferred upon corporations by the laws of the State of Delaware.

Fourth.—The amount of the total authorized capital stock of this corporation is dollars (\$.....) divided into shares, of dollars (\$.....) each.

The amount of capital stock with which it will commence business is dollars (\$.....), being shares, of dollars (\$.....) each.

Fifth.—The names and places of residence of each of the subscribers to the capital stock are as follows:

Name.	Residence.
.....
.....
.....

Sixth.—The existence of this Corporation is to be perpetual.

Seventh.—The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth.—The Directors shall have power to make and to alter or amend the By-laws; to fix the amount to be reserved as working capital, and to authorize and cause to be executed, mortgages and liens without limit as to the amount, upon the property and franchise of this Corporation.

With the consent in writing, and pursuant to a vote of the holders of a majority of the capital stock issued and outstanding, the Directors shall have authority to dispose, in any manner, of the whole property of this Corporation.

The By-laws shall determine whether and to what extent the accounts and books of this Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account, or book, or document of this Corporation, except as conferred by law or the By-laws, or by resolution of the stockholders.

The stockholders and directors shall have power to hold their meetings and keep the books, documents and papers of the corporation outside of the State of Delaware, at such places as may be from time to time designated by the By-laws or by resolution of the stockholders or directors, except as otherwise required by the laws of Delaware.

It is the intention that the objects, purposes and powers specified in the third paragraph hereof shall, except where otherwise specified in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or paragraph in this certificate of incorporation, but that the objects, purposes and powers specified in the third paragraph and in each of the clauses or paragraphs of this charter shall be regarded as independent objects, purposes and powers.

WE, THE UNDERSIGNED, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of an Act of the Legislature of the State of Delaware entitled "An Act Providing a General Corporation Law" (approved March 10th, 1899), and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this day of, A. D. 19....
In the presence of

..... (Seal.)
..... (Seal.)
..... (Seal.)

State of }
County of } ss.

BE IT REMEMBERED, That on this day of, A. D., personally appeared before me, a Notary Public,, parties to the foregoing Certificate of Incorporation, known to me personally to be such, and I having first made known to them and each of them the contents of said certificate, they did each severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, and each deposed that the facts therein stated were truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

.....
Notary Public.

§ 123. Maine Articles of Agreement.

We, the undersigned, in behalf of ourselves, our associates, successors and assigns, hereby associate together for the purpose of forming a corporation in accordance with the provisions of chapter 47 of the Revised Statutes of the State of Maine, and all acts amendatory thereof or additional thereto, to be called Company, to carry on the following lawful business, to wit:

Said corporation shall be located at, in the County of and State of Maine, and shall have its principal office in the State of Maine at said City of

And we hereby waive notice of the time, place and purpose of the first meeting of the undersigned associates, and fix the day of, A. D. 19..., at o'clock ...m., as the time, and the office of, in said city of, as the place of said meeting, and we do hereby consent to the transaction of such business as may come before said meeting or any legal adjournment thereof.

Dated at, Maine, this day of, A. D. 19....

Names.

Residences.

.....
.....
.....

§ 124. Maine Certificate of Organization.

We, the undersigned officers of a corporation organized at, at a meeting of the signers of the articles of agreement therefor duly called and held at, in the of, on day of, A. D. 19..., hereby certify as follows:

The name of said corporation is

The purposes of said corporation are

The amount of capital stock is

The amount of common stock is

The amount of preferred stock is

The amount of capital stock already paid in is

The par value of the shares is

The names and residences of the owners of said shares are as follows:

Names.

Residence.

No. of Shares.

.....
.....
.....

Said corporation is located at, in the county of The number of directors is, and their

names are The name of the clerk is
 and his residence is The undersigned,
 is president; the undersigned,, is treasurer, and
 the undersigned,, are a majority of the directors of
 said corporation.

WITNESS our hands this day of, A. D. 19...

....., President.

....., Treasurer.

.....

.....

.....

Directors.

.....ss.

A. D. 19...

There personally appeared, and severally made
 oath to the foregoing certificate, that the same is true.

Before me,, Justice of the Peace.

STATE OF MAINE.
 ATTORNEY-GENERAL'S OFFICE.

A. D. 19...

I hereby certify that I have examined the foregoing certificate, and the
 same is properly drawn and signed, and is conformable to the constitution
 and laws of the state.

.....

..... Attorney-General.

§ 125. Nevada Articles of Incorporation.

We, the undersigned, have this day voluntarily associated ourselves
 together for the purpose of forming a corporation under the laws of the
 State of Nevada.

1. The name of the corporation is

2. The principal office of the corporation is to be located in the town of
, in the County of, in the State
 of Nevada.

3. The nature of the business, and the objects and purposes proposed to
 be transacted, promoted and carried on by this corporation are:

4. The amount of the total authorized capital stock of the corporation
 shall be dollars, divided into shares of the
 par value of dollars each; the amount of the subscribed
 capital stock with which the corporation will commence business is
 dollars; the amount actually subscribed is
 dollars; the amount actually paid in is

5. The names of each of the original subscribers to the capital stock and
 the amount subscribed by each are as follows:

Names.	Dollars.	Shares.
.....
.....
.....

6. The period of duration of the existence of this corporation is perpetual.

7. The members of the governing board of this corporation shall be styled directors, and shall be in number.

8. After the amount of the subscription price or par value thereof has been paid in, the capital stock shall not be subject to assessment to pay debts of the corporation.

9. No stockholder shall have the right to cumulate his shares and give one candidate as many votes as the number of directors, multiplied by the number of his shares, shall equal, or distribute them on the same principle among as many candidates as he shall think fit.

In Witness Whereof, we have hereunto set our hands the day of, A. D. 19....

.....

State of }
 County of } ss.

On this day of, A. D., personally appeared before me, a Notary Public (or Judge or other officer, as the case may be), in and for County, known (or proved) to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

.....

§ 126. New Jersey Certificate of Incorporation.

We,, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the legislature of the state of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the several supplements thereto and act amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

1. The name of the corporation is

2. The location of the principal office in this state is at No. Street, in the of, county of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

3. The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its

branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any state, territory or colony of the United States and in any foreign country or place.

4. The total authorized capital stock of this corporation is dollars, divided into shares of a par value of dollars each.

5. The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which (\$.) is the amount of capital stock with which this company will commence business, are as follows:

Name.	Post-Office Address.	No. Shares.
.....
.....
.....

6. The period of existence of the corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of, A. D. 19....

Signed, sealed and delivered in the presence of

State of }
 County of } ss.

BE IT REMEMBERED, that on this day of, A. D. 19..., before me, a, personally appeared, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

[Official Signature.]

§ 127. New York Certificate of Incorporation.

Know all men by these presents that we the undersigned, all being of full age, all of us being citizens of the United States and at least one of us being a resident of the state of New York, desiring to form a corporation pursuant to the Business Corporations Law of the state of New York, do hereby certify, that

1. The name of the proposed corporation is
2. The purposes for which it is formed are
3. The amount of the capital stock isdollars.
4. The capital stock shall be divided into shares of the par value of dollars each.
5. The location of the principal business office is to be in the borough of, city of, state of New York.
6. The duration of the corporation is to be perpetual.

7. The number of its directors shall be

8. The names and postoffice addresses of the directors for the first year are as follows:

Names.	Postoffice Addresses.
.....
.....
.....

9. The names and postoffice addresses of the subscribers and the number of shares of stock which each agrees to take in the corporation are as follows:

Names.	Postoffice Addresses.	No. of Shares.
.....
.....
.....

In Witness Whereof, we have made and signed this certificate, in duplicate, this day of, 19....

In presence of:

..... (L. S.)
 (L. S.)
 (L. S.)

State of New York, }
 County of } ss.

On this day of, 19..., before me personally came, to me personally known and known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

.....
 Notary Public.

(For use out of the State.)

State of }
 County of } ss.

I,, clerk of the county of, and also being clerk of the court for the said county, the same being a court of record, do hereby certify, that, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of the taking of such proof or acknowledgment, a notary public in and for the county of, dwelling in the said county, commissioned and sworn, and duly authorized to take the same.

And further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county, the day of, 19....
, Clerk.

§ 128. South Dakota Articles of Incorporation.

We, the undersigned,, for ourselves, our associates and successors, have associated ourselves together for the purpose of forming a corporation under and by virtue of the statutes and laws of the state of South Dakota, and we do hereby certify and declare as follows, viz.:

1. The name of the corporation shall be
2. The purpose for which this organization is formed
3. The place where the principal business of this corporation shall be transacted is, in the county of, state of South Dakota, but a business office may be located at, where meetings of the directors and stockholders may be held for the transaction of business.
4. The term for which this corporation shall exist shall be twenty-five years.
5. The number of directors of this corporation shall be, and the names and residences of such who are to serve until the election of their successors are as follows:

Names.	Residences.
.....
.....
.....

6. The amount of the capital stock of this corporation shall be and is dollars, divided into shares of the par value of dollars each.
7. The resident agent of this corporation, upon whom service of process may be made, shall be of, South Dakota, and service upon him shall be taken and held as due and personal service upon this corporation.

No stockholder shall be liable for the debts of the corporation in any amount greater than his unpaid subscription.

IN TESTIMONY WHEREOF, we have hereunto set our hands this day of, 19.....

State of }
 County of } ss.

BE IT REMEMBERED, That on this day of, A. D. 19....., before the undersigned, personally appeared the above-named well and personally known to me to be the same persons described in and who executed the foregoing instrument, and severally duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at said county the day and year last above written.

.....,
 Notary Public.

State of }
 County of } ss.

..... and, being duly sworn, each for himself deposes and says: That he is one of the persons described in and who signed the foregoing articles of incorporation as an incorporator therein; that he has read said articles and knows the contents thereof; that the incorporators intend in good faith to form a corporation for the purpose of the promotion of a lawful business, as set forth in said articles, and not for the purpose of enabling any corporation or corporations to avoid the provisions of chapter 17 of the revised code of South Dakota, relating to unlawful trusts and combinations and laws amendatory thereto.

.....

Subscribed and sworn to before me this day of, 19....

.....

Notary Public.

§ 129. Wyoming Certificate of Incorporation.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned citizens of the United States over the age of twenty-one years, desiring to aid in the industrial (or productive) interests of the country, do by these presents voluntarily associate ourselves together for the purpose of forming a corporation, under the laws of the state of Wyoming.

And we hereby certify:

1. That the corporate name of said corporation is the company.

2. That the object for which said corporation or company is formed is

3. The capital stock of said company shall be dollars, to be divided into shares of the par value of dollars each and non-assessable.

4. The term of existence of our said company shall be years from and after the date of this certificate.

5. The affairs and management of our said company shall be under the control of directors, and are hereby selected and appointed to act as such directors, and to manage the affairs and concerns of our said company for the first year of its existence, and until their successors are elected and qualified according to law and the by-laws of our said company.

6. The name of the town in which the operations of our said company shall be carried on is the city of, county of, and state of, and the said business is also formed for the purpose of carrying on part of its business outside of the state of Wyoming, to wit, in the city of, county of, and state of, and elsewhere in the United States as the trustees of our said company may by resolution or otherwise direct, but the name of the

town and county in which the principal part of the business within the state of Wyoming is to be transacted is the city of, in the said county of, at which place its principal office and place of business shall be located.

(If the adoption of by-laws is to be delegated to the directors, the following clause should be inserted: The directors of our said company shall have the exclusive power to make such prudential by-laws as they may deem proper for the management and disposition of the stock and business affairs of our said company, not inconsistent with the laws of the state, prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of our said company.)

In Witness Whereof, we have executed this certificate in duplicate thisday of, A. D. 19....

.....(L. S.)

.....(L. S.)

Witnesses:(L. S.)

.....
.....
.....

State of Wyoming }
County of } ss.

I,, a notary public in and for the said county and state, do hereby certify that, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and each separately acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

My commission expires

Given under my hand and notarial seal this day of, A. D. 19....

.....

Notary Public.

§ 130. Articles of Incorporation of Benevolent, or Non-Profit Corporations.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, members of a benevolent society, do hereby, in accordance with the rules of such society and under and by virtue of the laws of the State of, incorporate ourselves and form a Corporation as follows, to wit:

First. That the name of this Corporation is the "American Hebrew Relief Society."

Second. That this Corporation is formed for charitable and benevolent purposes, and especially—

(a) The accumulation of a fund for the relief of sick and destitute persons and other charitable purposes connected and commensurate with the aims and objects of the society.

(b) To cultivate social intercourse among its members and assist in improving and ameliorating the moral and social condition of its beneficiaries.

(c) To purchase and own such real estate and other property as may be necessary for the purposes of the Society.

(d) For the purposes above specified, to receive donations; to receive, manage, take and hold real and personal property, by gift, grant, devise or bequest.

Pecuniary profit is the object of this Corporation.

Third. That the term for which said Corporation shall exist is years.

Fourth. That the place where its principal place of business shall be transacted shall be in the city of, state of

Fifth. The number of directors or trustees shall be nine (9). The names and residences of those who are selected for the first year and until the election and qualification of their successors, are:

(Insert names and places of residence.)

Sixth. That there is no capital stock and there are no shares of stock.

In Witness Whereof, we have hereunto set our hands
and seals on this 20th day of March, in the year of
our Lord one thousand nine hundred and twenty-six,
at the city of, County of,
State of

(Names of Incorporators.)

(Acknowledgment.)

§ 131. Articles of Incorporation of a Cooperative Corporation.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, have this day voluntarily associated ourselves, together for the purpose of forming a corporation under the laws of the state of

AND WE HEREBY CERTIFY:

First. That the name of the corporation shall be the Advance Cooperative Bakery.

Second. That the purposes for which it is formed are to buy, sell, engage in, conduct and carry on the business of a wholesale or retail bakery, or both, and to engage in and carry on a general merchandise and mercantile business and to buy and sell goods, wares and merchandise, and to buy, hold and own such real property as may be necessary for the proper conduct of its business, and to hold, own, buy, sell, mortgage and convey real and personal property, and to conduct and operate the said business, in such manner as will conduce to the economic and intellectual elevation of

the working people, and in accordance with the provisions of the Civil Code (or statutes) of the state of, for the incorporation and operation of cooperative business corporations and associations. And to further conduct and carry on said business for the promotion of the industrial interests of the members of said association.

Third. That the place where the principal business of said corporation is to be transacted is in the city of, in the county of, in the state of

Fourth. That the term for which said corporation is to exist is years from and after the date of incorporation.

Fifth. That the number of directors of said corporation shall be seven (7), and that the names and residences of those elected for the first year are as follows, to wit:

Names.	Residences.
(Insert names.)	(Insert places of residence.)

Sixth. That the amount which each member of said association is to pay, upon admission as a membership fee, is the sum of five dollars (\$5.00); that each of the above named persons, and each person signing these Articles has actually paid in said sum of five dollars (\$5.00) to said association; that the interest and right of each member in said association is to be equal.

In Witness Whereof, we have hereunto set our hands
and seals this 15th day of March, 1926.

(Signatures.)

State of }
County of } ss.

On this 15th day of March, A. D. one thousand nine hundred and twenty-six, before me, Adam Beadle, a Notary Public in and for said county, personally appeared (names), known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Authentication Whereof, I have hereunto affixed my
signature and seal of office, at said county, the day
and year last above written.

(Notarial Seal.)	ADAM BEADLE, Notary Public in and for the County of, State of
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§ 132. Necessity of Compliance With Statutory Requirements.—Where statutes attempt to prescribe the essentials of the articles, the duty to comply with the statutory mandate can not be evaded. A substantial compliance, however, will be sufficient. An entire omission of any of them will be fatal to the existence of the corporation, when attacked in a proper proceeding. Such statutes sometimes set forth the essential parts in numbered

clauses. A different order than that prescribed would not affect the validity of the articles, though it would be better to follow the statutory order. Likewise the mention of unnecessary facts would not affect the validity of the articles, provided they were sufficient in other respects.²⁰ Mere irregularities in the proceedings to form a corporation are not allowed to invalidate the subsequent exercise of powers as a corporation by the body thus formed; or as the courts express it, "The corporate existence cannot be questioned collaterally if the statutes authorizing the corporate formation have been substantially complied with, although some of the acts required to be performed may have been imperfectly performed, or omitted altogether.¹ Only the state may make such inquiry. But although the corporate existence may be secure, unless the original incorporators have carefully studied the statutes, they may fail to secure for it the power to conduct the particular line of business or some essential part thereof desired. This must be evident after one has noted the few intricate regulations which have been heretofore given not so much with the object of exhausting the great store of them, as in the hope that they may serve as a guide in, and impress one with the necessity of, studying the laws of the various states in order to determine not only how to incorporate in any one particular state, but also in what state it is desirable to incorporate the particular enterprise. Considerable skill and knowledge are required in the preparation of articles; and one not well informed in corporation law should not assume the responsibility of preparing them. The draftsman should be able to determine to a certainty the class into which the proposed corporation falls, under the provisions of the general law. Still more important is the selection of apt words with which to set forth the objects to be accomplished, and to point out the manner of accomplishing them.

§ 133. Incorporating by Telegraph.—In nearly all of the states where the corporation laws are so framed as to be attractive, there are companies which make it a business to attend to the filing and organization of new corporations. By the aid of

²⁰ *People v. Mount Shasta Mfg. Co.*, 107 Cal. 256, 40 Pac. 391.

¹ *Oroville v. Plumas County*, 37 Cal. 354; *Los Angeles Holiness Band v. Spires*, 126 Cal. 541, 58 Pac. 1049, and cases cited.

these companies it is possible to organize a corporation under the laws of a distant state with as little delay almost as if the proceedings were conducted in the state where the proposed enterprise is to be conducted. The following telegraphic correspondence will illustrate how this may be done:

July 30th, 1926.

THE CORPORATION TRUST COMPANY,
WILMINGTON, DELAWARE:

Please prepare to file certificate of incorporation "TENTOBAC CORPORATION," capital fifty thousand dollars, twelve thousand five hundred common, thirty-seven thousand five hundred preferred. One hundred dollars par. Object to buy, sell, deal in and manufacture tobacco, cigars and all other forms of tobacco. Add appropriate clauses conferring power to deal in chemicals and drugs, toilet articles, carry on mining, conduct importing and exporting business, patent rights. Add other general clauses at your discretion. The preferred stock shall be entitled out of any and all surplus net profits, whenever declared by the Board of Directors to cumulative dividends at the rate of, but not exceeding seven per cent per annum for each and every year from the issue of such stock payable half-yearly, in preference and priority to any payment of any dividend on the common stock for such year. The date of payment of the half yearly dividend to be fixed by the Board of Directors. Any preferred stock issued between dividend dates to be entitled at the next dividend date to a dividend at the rate aforesaid for the broken period. In the event of the dissolution of the corporation or of a distribution of the assets or any portion thereof, by way of return of capital, the holders of the preferred stock shall be entitled to receive and be paid out of the surplus funds of the corporation or out of the assets so distributed, sums up to the par value of their preferred shares, before anything shall be paid therefrom to the holders of the common stock. The holders of the preferred stock shall have no voting power on any question. After the payment of said preferential cumulative dividend of seven per cent to the holders of the preferred stock, any further amount declared as dividends shall be paid to the holders of the common stock until they shall have received a similar cumulative dividend of seven per cent per annum, and should there be any further amount declared in dividends, in any fiscal year, the said further amount shall be divided pro rata among the holders of the preferred and common stock in accordance with their holdings. The common stock shall be subject to the prior rights of the holders of the preferred stock. In the event of the dissolution of the corporation or of a distribution of the assets or any portion thereof by way of return of capital, the holders of the common stock shall, after the holders of the preferred stock have received the par value of their preferred shares, be entitled to the balance of the surplus funds of the corporation or of the assets so distributed. The holders of the outstanding common stock may at any time authorize the conversion of not more than sixty per cent of the total common stock into preferred

stock, which preferred stock shall have no voting power, and be entitled to the preferences above set forth. Have usual provisions as to perpetual existence, no stockholders' liability, altering number of directors, powers of directors, etc. Have by-laws authorize meetings in San Diego and New York. Permanent board, C. Hillyer, L. Mason, N. McWilliams. Wire me total cost and fees, and I will remit by wire.

CURTIS HILLYER.

Wilmington, Del., July 31, 1926.

CURTIS HILLYER,

306 Scripps Bldg., San Diego, California.

Total fees and disbursements Ten Tobacco Corporation one hundred sixty-five dollars. Will proceed immediately upon receipt funds.

CORPORATION TRUST COMPANY OF AMERICA.

July 31, 1926.

CORPORATION TRUST COMPANY OF AMERICA,

Wilmington, Delaware.

Have wired you through First National of New York one hundred sixty-five dollars. Please file papers at once. We want to organize Saturday. Wire me name of incorporators and amount of their subscription also day of filing. Have general powers sufficient to transact any kind of business. Be sure name is correct. Tentobac Corporation. Eight letters in first word.

CURTIS HILLYER.

Wilmington, Del., Aug. 2, 1926.

CURTIS HILLYER,

306 Scripps Bldg., San Diego, California.

Charter Tentobac Corporation filed. Directors will be elected Saturday morning nine o'clock and may meet immediately thereafter. Names of incorporators, John C. Draper, C. L. Rimlinger, F. A. Armstrong, subscribing for ten shares, eight by Draper, one each of others. At meeting electing directors will be transferred to them.

Corporation Trust Co. of America.

CHAPTER XVI.

BY-LAWS.

- § 134. By-Laws—Definition and Function.
- § 135. Importance of By-Laws.
- § 136. By-Laws—By Whom Adopted.
- § 137. By-Laws—How Adopted.
- § 138. Extent and Scope of By-Laws.
- § 139. Scope of Power to Make By-Laws.
- § 140. Limitations Upon the Power to Enact By-Laws.
- § 141. Reasonable Regulations.
- § 142. By-Laws in Restraint of Trade.
- § 143. By-Laws Affecting Vested Rights.
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- § 145. By-Law Provision as to Publication of Notices.
- § 146. Membership Chargeable With Notice of By-Law Provisions.
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- § 150. Relation of By-Laws to Constitution of Corporations Not Organized for Profit.
- § 151. The Book of By-Laws.
- § 152. Contents of By-Laws.
- § 153. Adopting By-Laws Without Meeting.
- § 154. Consent to Adoption of By-Laws.
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- § 156. Certification of By-Laws.
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- § 164. Brief Code of By-Laws.
- § 165. Brief Code of By-Laws for Ordinary Business Corporations.
- § 166. Brief Code of By-Laws for Ordinary Business Corporations. [Another set.]
- § 167. Code of By-Laws for Ordinary Business Corporations.
- § 168. By-Laws of a Savings Bank.
- § 169. By-Laws of United States Steel Corporation.
- § 169a. By-Laws of an Industrial Corporation.
- § 169b. Miscellaneous By-Law Provisions.

§ 134. **By-Laws—Definition and Function.**—A by-law is defined as a rule or law of a corporation for its government; its function is to prescribe the rights and duties of the members with reference to the internal government of the corporation, the management of its affairs, and the rights and duties existing between the members *inter sese*.¹ Until it is repealed, it is a continuing rule for the government of the corporation and its officers,² its proper office being to regulate the transaction of the incidental business of the corporation.³ They are self-imposed rules, resulting from an agreement or contract between the corporation and its members to conduct the corporate business in a particular way.⁴ Hence, the by-laws may provide for the control of officers and agents or they may regulate the conduct and prescribe the rights and duties of members toward the corporation and among themselves in reference to the management of its affairs by virtue of their membership in the same corporate body.⁵ They are not, however, any part of the corporation's charter.⁶

§ 135. **Importance of By-Laws.**—Next in importance to the articles or charter, is the code of by-laws. The by-laws occupy about the same relation to the articles that the general statutes hold to the constitution of a state. The articles define and limit the purpose of the corporation, while the by-laws prescribe how the purpose is to be accomplished. While there is but little difference as between different corporations, with respect to the essentials of effective by-laws, yet in practice considerable difference of form, arrangement and phraseology is found; this is inevitable where it is attempted to make provision in detail for every contingency which may be presented in conducting the corporate business. By-laws having been once adopted, become the permanent rule to govern the corporation's conduct.

¹ *Cummings v. State*, 47 Okla. 627, 149 Pac. 864, L. R. A. 1915E 774.

² *North Milwaukee Town Site Co., No. 2, v. Bishop*, 103 Wis. 492, 79 N. W. 785, 45 L. R. A. 174.

³ *Ireland v. Globe Milling Co.*, 21 R. I. 9, 41 Atl. 258, 79 A. S. R. 769.

⁴ *Bank of Holly Springs v. Pinson*, 58 Miss. 421, 38 A. R. 330.

⁵ *Bornstein v. District Grand Lodge, No. 4*, 2 Cal. App. 624, 84 Pac. 271.

⁶ *Brewster v. Hartley*, 37 Cal. 15, 99 A. D. 237.

§ 136. By-Laws—By Whom Adopted.—In most states, as California, Indiana, Massachusetts, and New Hampshire, the by-laws must be adopted by the stockholders. In Illinois, however, this power rests with the directors. In Delaware, the directors may be given the power to enact the by-laws in the original articles. Similar provisions are found in the statutes of New Jersey and Pennsylvania. In New Jersey, however, any by-law may be amended or repealed by the stockholders; and as in Pennsylvania, the stockholders also may enact by-laws, which, in the case of conflict, take precedence over those of the directors, it is customary in that state to provide for by-laws adopted by the stockholders only. While in the absence of a law or custom to the contrary, the power to make by-laws resides in the members of the corporation at large,⁷ such power may be delegated to a select body, such as a board of directors.⁸ But as power to enact by-laws is not included in the general power of directors to control the stock and business of the company, authority given to the board of directors to alter or amend by-laws of the corporation must be so construed as to restrict them from altering or annulling a by-law imposing a limitation on their powers.⁹

§ 137. By-Laws—How Adopted.—In some states there are two legal methods of adopting by-laws, either one of which may be followed. In such states by-laws may be adopted either by a majority vote of the stock at a properly called meeting of the stockholders, or by the written assent of two-thirds of the stock. In the latter case, a complete legal organization may be effected without calling together the members or the stockholders for the period of one year, at the end of which directors must be elected for the ensuing year.

§ 138. Extent and Scope of By-Laws.—As to the extent to which by-law provisions should go into details and specifications, much depends upon the character of the corporation, the nature of the business to be transacted, and the relation of the stock-

⁷ North Milwaukee Town Site Co., No. 2, v. Bishop, 103 Wis. 492, 79 N. W. 785, 45 L. R. A. 174.

⁸ Cahill v. Kalamazoo Mut. Ins. Co., 2 Doug. (Mich.) 124, 43 A. D. 457.

⁹ Stevens v. Davison, 18 Grat. (Va.) 319, 98 A. D. 692.

holders to each other. In the case of what is known as a "close" corporation, that is, a corporation in which there are but a few large stockholders working together harmoniously, as where a copartnership is incorporated in order to perpetuate the business and preserve the firm name, no by-laws are really needed, except as a formal compliance with the statute requiring the adoption of by-laws. In such cases, very brief by-laws, making the most general provisions, will be satisfactory and answer every purpose. On the other hand, if the corporation be formed to carry on an extensive business, extending over large territory, and covering various lines of business and having numerous stockholders whose relations are not intimate, much friction, dissension and litigation may be avoided by a full elaboration of all important matters covered by the by-laws.

In drafting a code of by-laws, while great care should be taken to avoid ambiguity and obscurity, yet, as far as is consistent with perspicuity and completeness, the fewest possible words should be used. No doubt should remain as to the meaning. Discord and failure have frequently resulted from unskilfulness in preparing, and absence of due consideration in the adoption of, by-laws. In preparing and adopting them, the fact that the rights and duties of officers and stockholders are fully set forth in statutes should not stand in the way of such rights and duties being fully defined and covered in the by-laws where the stockholders are widely scattered, or the business is done largely by agents, or the board of directors is numerically large, and individually engaged in other enterprises. It is better that the law governing corporations should be embodied in the compact forms of by-laws than that the officers and members should be under the necessity of frequently hunting up the law, or consulting attorneys.

§ 139. Scope of Power to Make By-Laws.—The power of a corporation to prescribe rules for its government and to regulate the conduct and define the duties of its members is not an unlimited one. This power is implied in the creation of a corporation, subject to the limitations that the charter powers of the corporation may not be exceeded therein. It is regarded as of so much importance that it is seldom left to implication, but is ordinarily conferred in express terms by the law from which

the corporate existence is derived. It is an inherent and continuous power.¹⁰ Where a statute under which a corporation is formed authorizes it to make by-laws upon specially named subjects, there is an implied denial of authority to make by-laws upon subjects not named. The power to make by-laws, however, implies the power to alter or repeal.¹¹

§ 140. Limitations Upon the Power to Enact By-Laws.—

The most general limitations upon the power to enact and enforce by-laws are: that they must not be in conflict with the articles or general law, and that they must be reasonable and necessary; that is, promotive of the aggregate interest of the membership, without an infringement of the legal rights of individuals. Only such by-laws may be made as are not inconsistent with the constitution and the law; and the power to alter has the same limit, so that no alteration could be made which would infringe a right already given and secured by the contract of the corporation.¹² Treating the articles, or charter of a corporation as its constitution, a by-law may regulate the exercise of power conferred by it, but cannot alter it.¹³ Briefly stated, if a by-law is consistent with the purposes for which the corporation was created, is not in conflict with the law of the land, or contrary to good morals, and is reasonable, in a legal sense, in other words, is a reasonable regulation, it is valid. On the other hand, if it be repugnant to law, whether common or statutory, or the constitution of the state or of the United States, or to public policy or good morals, it is void.¹⁴

§ 141. Reasonable Regulations.—Whether a by-law be reasonable depends very much upon whether it is necessary. It is never necessary to curtail seriously the liberties of the stockholders or members; and a by-law which seeks to do so is void.

¹⁰ *Funk v. Stevens*, 102 Neb. 681, 169 N. W. 6, 11 A. L. R. 639.

¹¹ *Mooney v. Farmers' Mercantile, etc., Co.*, 138 Minn. 199, 164 N. W. 805.

¹² *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159.

¹³ *Rex v. Cutbush*, 4 Burr. (Eng.) 2204; *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159; *Railway Co. v. Allerton*, 18 Wall. 233, 21 L. Ed. 902.

¹⁴ *Steiner v. Steiner Land, etc., Co.*, 120 Ala. 128, 26 So. 494; *People's Home Sav. Bank v. San Francisco Superior Court*, 104 Cal. 649, 38 Pac. 452, 43 A. S. R. 147, 29 L. R. A. 844.

Nor can the power to enact by-laws be exercised in such manner as to cause great vexation and unnecessary inconvenience. Such a by-law will be deemed unreasonable, and for that reason in conflict with the spirit of the law conferring authority to enact by-laws. Nor can the corporation enforce a by-law requiring formalities so extraordinary as to amount to a material inconvenience in the transfer of shares. A corporation may be empowered by its charter or general law not only to regulate, but also to control a transfer of stock, and to enact by-laws prescribing the conditions to be when so empowered, it may refuse to register a transfer made otherwise than in the manner pointed out. It is both convenient and necessary that the officers have a record by which to legally test all claims of membership against the company, for the purposes of making assessments, holding elections, and paying dividends. Such by-laws are so salutary and conservative of public as well as corporate interests that the absence of some such provisions in the by-laws would, in the case of a corporation doing an extensive business, be exceptional. But if a by-law amounted to a virtual prohibition upon the transferability of shares, as if it assumed to prescribe the consideration for the transfer, or to designate to whom it should, and should not, be made, it would be void. A by-law, however, which exacts of one seeking a transfer, a fee calculated merely to meet the expense incurred in making the transfer, is not unreasonable.¹⁵

Familiar instances of by-laws held to be invalid, especially in business corporations, where property rights are involved, are those attempting to impair the right of stockholders to sue in the courts; to absolve shareholders from their statutory liability to creditors; or to impose upon shareholders a liability to pay the corporate debts when not within the power conferred on the corporation.¹⁶ By-laws must not disturb vested rights or impair the obligation of a contract,¹⁷ affect rights of property or create obligations unknown to the law,¹⁸ or take away or abridge the

¹⁵ *Giesen v. London, etc., Am. Mortg. Co.*, 102 Fed. 584, 42 C. C. A. 515.

¹⁶ *Kletz v. Pan-American Match Co.*, 221 Mass. 38, 108 N. E. 764, A. C. 1917D 895.

¹⁷ *Gray v. Portland Bank*, 3 Mass. 364, 3 A. D. 156.

¹⁸ *Ireland v. Globe Milling Co.*, 21 R. I. 9, 41 Atl. 258, 79 A. S. R. 769.

substantial rights of a stockholder or member.¹⁹ A by-law providing that a stockholder shall forfeit his stock upon non-payment of assessments thereon is invalid,²⁰ so is a by-law imposing a penalty of ten per cent per month for non-payment of dues, particularly where the charter provides that the amount of unpaid assessments shall be recovered by action, for a by-law cannot add to the rule of damages fixed by the charter.¹ While a by-law which provides that a transfer of stock shall be invalid unless approved by the board of directors or other representatives of the corporation is an invalid restraint upon the alienation of the corporate stock,² a by-law which merely prescribes formalities to be observed in the transfer of stock is not an unreasonable restriction and is not necessarily invalid. The decisions are conflicting as to the validity of a by-law requiring a stockholder before selling his stock to afford the corporation or other stockholders an opportunity to purchase the same. Some jurisdictions hold that such a by-law is an unreasonable restraint upon the power to alienate the stock,³ while in other jurisdictions by-laws prohibiting the disposition of stock without first offering to sell it to the corporation have been upheld.⁴

§ 142. By-Laws in Restraint of Trade.—The same rule applies to by-laws unreasonably restrictive, as is applicable to contracts in restraint of trade; they are alike unenforceable.⁵ But members of an incorporated business association may adopt a valid by-law binding its members not to abuse the right of mem-

¹⁹ *People's Home Savings Bank v. Superior Court*, 104 Cal. 649, 38 Pac. 452, 43 A. S. R. 147, 29 L. R. A. 844.

²⁰ *In re Long Island R. Co.*, 19 Wend. (N. Y.) 37, 32 A. D. 429.

¹ *National Mutual Fire Ins. Co. v. Yeomans*, 8 R. I. 25, 86 A. D. 610.

² *Miller v. Farmers' Milling, etc., Co.*, 78 Neb. 441, 110 N. W. 995, 126 A. S. R. 606.

³ *Victor G. Bloede Co. v. Bloede*, 84 Md. 129, 34 Atl. 1127, 57 A. S. R. 373, 33 L. R. A. 107; *Ireland v. Globe Milling Co.*, 20 R. I. 190, 38 Atl. 116, 38 L. R. A. 229.

⁴ *New England Trust Co. v. Abbott*, 162 Mass. 148, 38 N. E. 432, 27 L. R. A. 271; *Nicholson v. Franklin Brewing Co.*, 82 Ohio St. 94, 91 N. E. 991, 137 A. S. R. 764, 19 A. C. 699.

⁵ *People v. Chicago Live Stock Exch.*, 170 Ill. 556, 48 N. E. 1062, 62 A. S. R. 404, 39 L. R. A. 373; *Kolff v. St. Paul Fuel Exch.*, 48 Minn. 215, 50 N. W. 1036.

bership by unfairly competing with the corporation in business. Thus, an incorporated board of trade may enforce a by-law prohibiting its members from gathering in any public place in the immediate vicinity of its exchange room before and after the times when the exchange room is open for general trading, and there forming a market for the purpose of trading for the future delivery of articles dealt in on the exchange.⁶ And where a corporation has been formed for the purpose of supplying water for the use of owners of land within a particular district, its stockholders, all of whom are such land owners, may pass and enforce a by-law limiting the right to the use of the water to stockholders.⁷

§ 143. **By-Laws Affecting Vested Rights.**—The term “vested right” is often loosely used. In one sense every right is vested. If a man has a right at all, it must be vested in him; otherwise, how could it be a right? The moment a contract is made, a right is vested in each party to have it remain unaltered, and to have it performed. The term, “vested right,” however, is properly used to designate a right which has become so fixed that it is not subject to be divested without the consent of the owner, as contradistinguished from rights which exist only so long as they are not withdrawn. The whole question of what are vested rights, and, therefore, exempt from the operation of by-laws, would require much space to discuss. At any rate, a by-law attempting to divest or disturb a vested right, or to impair the obligation of a contract, or to lessen the responsibility of the corporation to its members or stockholders is, to that extent at least, void and of no effect.⁸ Where a by-law enters into a contract and becomes binding as a part thereof, a subsequent by-law cannot destroy a right accrued under the contract by virtue of such existing law.⁹ A by-law as-

⁶ *State v. Milwaukee Chamber of Commerce*, 47 Wis. 683, 3 N. W. 760.

⁷ *McFadden v. Board of Supervisors of Los Angeles County*, 74 Cal. 571, 16 Pac. 397.

⁸ *Knights of Golden Rule, Supreme Commandery, etc., v. Ainsworth*, 71 Ala. 436, 46 A. R. 332; *People v. Crockett*, 9 Cal. 113; *Ayers v. Grand Lodge A. O. U. W.*, 188 N. Y. 280, 80 N. E. 1020.

⁹ *Becker v. Farmers' Mut. F. Ins. Co.*, 48 Mich. 610, 12 N. W. 874; *Illinois Conf. Female College v. Cooper*, 25 Ill. 148; *Bornstein v. Grand Lodge*, 2 Cal. App. 624, 84 Pac. 271; *Schack v. Supreme Lodge*, 9 Cal. App. 584, 99 Pac. 989.

suming to fix a shorter time for performance than that fixed by a subsisting contract, and declaring a forfeiture of all rights thereunder in case of default, is of no effect.¹⁰ But a by-law of a mutual benefit corporation which provides for the payment of a weekly sum to members in case of sickness, without specifying how long such payments shall continue, may be changed after sickness has commenced, so as to limit the period such payments shall continue thereafter, but not so as to affect payments which have become due before the change.¹¹

§ 144. By-Laws Imposing Penalties.—Reasonable penalties may be imposed and collected for infractions of by-laws, though judicial remedies are seldom invoked for that purpose. In the case of a dividend paying corporation, it has the remedy of such violations in its own hands. It may deduct the amount of fines and penalties from dividends payable to the violator. It would, in most cases, be impossible to enforce by-laws without the imposition of penalties for their non-observance. The penalty which may be imposed by the terms of by-laws may be either positive or negative in character; that is, it may consist either of the imposition of pecuniary fines or of the withholding of benefits and privileges. The latter may be either temporary, as in the case of suspension for a limited time, or permanent, as in case of expulsion.¹² But all penalties must be reasonable and bear a just proportion to the offense.¹³ The finable offenses should be particularly specified in the by-laws. Statutes usually confer the power to fine upon the body having authority to enact by-laws. Penalties so imposed cannot, however, extend beyond a reasonable pecuniary sum. In California, for instance, the limit is \$100 for each offense. They must not amount to a restraint of liberty, or a forfeiture of corporate interests, except to the extent and by the procedure authorized by statute.

Pecuniary penalties may be collected either by action or by deducting them from the dividends of offending members.¹⁴ A

¹⁰ *People ex rel. Pulford v. Fire Department*, 31 Mich. 458.

¹¹ *Stohr v. San Francisco Musical Fund Soc.*, 82 Cal. 557, 22 Pac. 1125.

¹² *Palmetto Lodge v. Hubbell*, 2 Strohb. (S. C.) 457, 49 A. D. 604.

¹³ See *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 124, 43 A. D. 457.

¹⁴ See *Graves v. Colby*, 9 Adal. & E. 356; *Feltmakers v. Davis*, 1 Bos. & P. 98; *Child v. Hudson's Bay Co.*, 2 P. Wms. 208.

corporation has no implied or inherent power to declare a forfeiture of the shares owned by a delinquent shareholder. The right must be conferred by statute, if it exists at all.¹⁵ While many acts by corporate officers are made punishable by statute, the same acts may be made subjects for fines under by-law provisions.

§ 145. By-Law Provision as to Publication of Notices. —

The by-laws should designate the newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, shall be published, which, in some states, must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county. Some statutes provide that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause, at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county.

§ 146. Membership Chargeable With Notice of By-Law Provisions.—By-Laws regularly adopted, and not subject to any of the objections which render them inherently ineffective, are binding upon all the stockholders or members, and they are conclusively presumed to have notice of all valid by-laws.¹⁶ Such by-laws are elements of the member's contract of membership in the corporation, and likewise affect all his dealings with the

¹⁵ *Matter of Long Island R. Co.*, 19 Wend. (N. Y.) 37, 32 A. D. 429; *Westcott v. Minnesota Min. Co.*, 23 Mich. 145; *Hill v. Nisbet*, 100 Ind. 341; *Williams v. Lowe*, 4 Neb. 382; *Budd v. Multnomah St. R. Co.*, 15 Ore. 413, 15 Pac. 659, 3 A. S. R. 169.

¹⁶ *Brent v. Washington Bank*, 10 Pet. (U. S.) 596, 9 L. Ed. 547; *Treadway v. Hamilton Mut. Ins. Co.*, 29 Conn. 68; *K. of P. Supreme Lodge, etc., v. Knight*, 117 Ind. 489, 20 N. E. 479; *Walsh v. Aetna L. Ins. Co.*, 30 Ia. 133, 6 A. R. 664; *Frank v. Morrison*, 58 Md. 423; *Mitchell v. Lycoming Mut. Ins. Co.*, 51 Pa. St. 402.

corporation. They determine the extent of his duties, rights and liabilities.¹⁷

§ 147. **By-Laws Not Binding Upon Strangers to the Corporation.**—By-Laws of private corporations are not in the nature of legislative enactments, so far as third persons are concerned. They are mere regulations of the corporation for the control and management of its own affairs and are not intended to interfere in the least with the rights and privileges of others who do not subject themselves to their influence. As a general rule they affect only the members of the corporation,¹⁸ and are binding only on those dealing with the corporation who have notice of them, or who deal with it under such circumstances that they are bound to take notice thereof.¹⁹ Thus, persons contracting with a corporation are not bound to know of a by-law limiting the power of its agent to make the customary contract appertaining to the business he is authorized to transact,²⁰ though persons dealing with the corporation through its officers and agents with notice of a by-law limiting their powers are bound thereby.¹

One who, not being a member of a corporation, contracts with it is not chargeable with notice of a by-law which precludes it from incurring certain obligations otherwise consistent with its charter.² This rule, as has been said, is applicable, of course, only where the stranger has no actual notice of such by-laws, he, as distinguished from a stockholder, not being chargeable with what is called "constructive notice" by reason of the mere existence of the by-law. So far is this principle carried that even a stockholder who has no actual notice of a by-law regulating the mode in which the business of the corporation must be conducted, is not chargeable with constructive notice of it when he is deal-

¹⁷ *Wist v. Grand Lodge A. O. U. W.*, 22 Ore. 271, 29 Pac. 610, 29 A. S. R. 603.

¹⁸ *Moyer v. East Shore Terminal Co.*, 41 S. C. 300, 19 S. E. 651, 44 A. S. R. 709, 25 L. R. A. 48.

¹⁹ *Bank of Holly Springs v. Pinson*, 58 Miss. 421, 38 A. R. 330.

²⁰ *Rathbun v. Snow*, 123 N. Y. 343, 25 N. E. 379, 10 L. R. A. 355.

¹ *Hale v. Mechanics' Mutual Fire Ins. Co.*, 6 Gray (Mass.) 169, 66 A. D. 410.

² *Metropole Bldg. & Turkish Bath Co. v. Garden City Fan Co.*, 50 Ill. App. 681.

ing with the corporation merely as a customer.³ This feature of the rule, however, is somewhat limited in application in Pennsylvania, where the "by-laws of a corporation when adopted become written into the charter, and not only define and limit the rights, duties and powers of the officers among themselves, but, so far as those with whom the corporation has dealings are concerned, put such parties upon notice in dealing with such officers, as to the extent of their power and agency, whether the specific by-law has been brought home to them or not."⁴

§ 148. Enforcement of By-Laws.—The enforcement of by-laws is left by the law largely to be regulated by the majority operating through the corporate machinery. It is only when the validity of a transaction alleged to be violative of a by-law is the subject of litigation that a court passes upon the question. The prejudice to corporate interests resulting from litigation is a constant incentive to the due observance of by-law provisions. Transactions directly contrary to these may be set aside at the suit of any stockholder, in an action brought for that purpose, and sometimes, even creditors may have them annulled. Power of a corporation to enforce its by-laws properly made, by pecuniary penalties and corporate disabilities proportionate to the offense, is recognized.⁵ Thus, the courts sustain by-laws providing for the suspension of members of fraternal associations and the like for nonpayment of dues. Such disabilities are considered reasonable and an efficient means to enforce payment of contributions and fines.⁶

§ 149. By-Laws of Mutual Benefit Societies.—The by-laws of mutual benefit associations, in connection with the certificates of membership, determine the rights of the members and of the associations to which they belong, and may be enforced by the

³ *Pearsall v. Western Union Tel. Co.*, 124 N. Y. 256, 26 N. E. 534, 21 A. S. R. 662; *Rice v. Peninsular Club*, 52 Mich. 87, 17 N. W. 708; *Rudd v. Robinson*, 126 N. Y. 113, 26 N. E. 1046, 22 A. S. R. 816, 12 L. R. A. 473; *Flint v. Pierce*, 99 Mass. 68, 96 A. D. 691.

⁴ *Millward-Cliff Cracker Co.'s Estate*, 161 Pa. St. 157, 28 Atl. 1072.

⁵ *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 124, 43 A. D. 457.

⁶ *Palmetto Lodge No. 5, I. O. O. F., v. Hubbell*, 2 Strop. L. (S. C.) 457, 49 A. D. 604.

parties and beneficiaries, according to their rights, as therein provided.⁷ While a mutual benefit society cannot change its by-laws arbitrarily, so as to repudiate an obligation created by a policy of insurance,⁸ yet where a change is regularly made, and the motive which influences it is an honest one, promotive of the welfare of the society, and the members are all given an opportunity to avail themselves of the change, no actionable wrong is thereby done to them or to their beneficiaries.⁹

§ 150. Relation of By-Laws to Constitution of Corporations Not Organized for Profit.—Corporations incorporated for other than profitable objects, for instance, those of a social, benevolent and political character, often enact a constitution distinct from by-laws, and some of them have, in addition, rules of order. Now, a constitution, in so far as it declares the purposes and principles by which its members are actuated, is no part of the by-laws; and, in so far as it limits the powers of the body as a whole, or the conduct and relations to it and to each other, or the membership, is nothing more than by-laws. But there is usually this difference: The constitution cannot be suspended or amended without a prescribed procedure, and usually the vote of a larger proportion of the members present and voting than with respect to the by-laws. A common provision is the requirement of notice at a previous meeting in order to amend, repeal, or suspend a constitutional provision; whereas, it is often provided that a by-law may be suspended upon a mere motion without previous notice. Notwithstanding this distinction, however, such a constitutional provision is no more, when compared with the charter, than a by-law under an inappropriate name.¹⁰

⁷ *E. Union Mut. Assn. v. Montgomery*, 70 Mich. 587, 38 N. W. 588, 14 A. S. R. 519; *Arthur v. Odd Fellows, etc., Assn.*, 29 Ohio St. 557; *Osceola Tribe, Independent Order of Red Men v. Schmidt*, 57 Md. 106.

⁸ *Bornstein v. Grand Lodge, etc., B'nai B'rith*, 2 Cal. App. 624, 84 Pac. 271.

⁹ *Supreme Lodge, K. of P.*, 117 Ind. 489, 20 N. E. 479, 3 L. R. A. 409; *Wist v. Grand Lodge, A. O. U. W.*, 22 Ore. 271, 29 Pac. 610, 29 A. S. R. 603.

¹⁰ See *Supreme Lodge, K. of P., v. Knight*, 117 Ind. 495, 20 N. E. 479; *Supreme Lodge, K. of P., v. Kutscher*, 179 Ill. 340, 53 N. E. 620, 70 A. S. R. 115; *Dornes v. Supreme Lodge, K. of P.*, 75 Miss. 466, 23 So. 191.

§ 151. **The Book of By-Laws.**—In the absence of a statute on the subject, it cannot be said that by-laws properly adopted would be invalid and unenforceable merely because not entered in a book. Statutes are sometimes found, however, providing that a book shall be kept, to be known as the “Book of By-Laws,” that all by-laws shall be recorded therein, and that no by-laws shall take effect until so recorded. It is usually required that the book must be open to the inspection of the public during office hours each day.¹¹

The prevention of fraud, as well as many considerations of convenience, would seem to render necessary the keeping of such a book and the entry therein of by-laws and amendments thereof, even in the absence of such statutes. The original set of by-laws should be entered with proper headings as adopted, marginal space being left for annotations.

In case of amendment or repeal, a marginal note to that effect should be made with red ink, referring to the page where the amended by-law may be found, also giving the date of adoption of the amendment and the page of the minute book which shows by what action, whether of the members or of the board of directors, the amendment was made. At such subsequent page of the by-law book, the entire section of the by-laws as amended should be recorded.

In case of a general revision and re-adoption of by-laws, a brief record thereof should be made above the caption of the original by-laws, and a reference given to the subsequent page where the revised code beings.

§ 152. **Contents of By-Laws.**—A corporation may, by its by-laws, where no other provision is specially made by statute, provide for the following, among other things:

1. What date and hour of annual meeting of stockholders.
2. Notice of annual meeting of stockholders.
3. Special meeting of annual meeting of stockholders.
4. Notice of special meeting of stockholders.
5. Waiver of notice of special meeting of stockholders.
6. Quorum at stockholders' meetings.
7. Adjournment of meeting for want of quorum.

¹¹ *Powers v. Marine Engineers' Beneficial Ass'n*, 52 Cal. App. 551, 199 Pac. 353.

8. Who presides at stockholders' meetings.
9. Who acts as secretary at stockholders' meetings.
10. Manner of voting at stockholders' meetings.
11. List of stockholders at annual meeting.
12. Closing of transfer books.
13. Certification of proxies.
14. Inspection of election.
15. Powers of board of directors.
16. Classification of directors.
17. Number of directors.
18. Number of directors—how changed.
19. Qualifications of directors.
20. Term of office of directors.
21. Period of keeping polls open at election of directors.
22. Vacancies of board—how filled.
23. Place of meeting of directors.
24. Regular meetings of directors.
25. Time of regular meetings of directors.
26. Notice of regular meetings.
27. Special meetings of board of directors—how called.
28. Notice of special meeting of directors.
29. What business may be transacted at special meeting.
30. Waiver of notice of special meeting.
31. Quorum of directors.
32. Adjournment for want of quorum.
33. Vote necessary for passage of resolutions.
34. Order of business at directors' meeting.
35. Presiding officer at directors' meeting.
36. Contracts of directors—how validated.
37. Contracts with companies in which directors are interested—how validated.
38. Submission of contracts by directors to stockholders.
39. Compensation of directors.
40. Election of officers.
41. Committees.
42. Financial committee—powers and duties.
43. Executive committee—powers and duties.
44. Exercise of power of board by committees.
45. Who are officers?
46. May one person hold more than one office?
47. Officers—how removed.
48. Chairman of the board, powers and duties.
49. President's powers and duties.
50. Signature of corporate instruments.
51. Vice president's powers and duties.
52. General counsel's powers and duties.
53. Treasurer's powers and duties.

54. Who has custody of funds and securities?
55. Who endorses checks, notices and other obligations?
56. Who signs checks?
57. Who signs bills of exchange and notes?
58. Who signs certificates of stock?
59. Who keeps the books of account?
60. Does the treasurer give bond?
61. Powers and duties of secretary?
62. Does he serve notices?
63. Does he sign contracts?
64. What books does he keep?
65. Are there to be assistant treasurer and secretary?
66. Who has power to vote on stock of other corporations owned by the company?
67. Form of certificate of stock.
68. Certificate of stock—how signed.
69. Disposal of Canceled Certificates.
70. Shares—how transferred.
71. Power of board to regulate transfer.
72. Transfer agent or register of transfer.
73. Closing of transfer books.
74. Dividends—how declared.
75. Dates for declaration of dividends on preferred stock.
76. Date of payment of dividends on preferred stock.
77. Dividends upon collateral stock—when payable.
78. Limitation upon power of directors to declare dividends.
79. Requiring board to declare dividends.
80. Ledger on corporate seal.
81. Custody of corporate seal.
82. Amendments to by-laws.
83. Fiscal year of company.
84. Auditor's powers and duties.
85. May the directors' meetings be held outside of the state?
86. May the directors have power to amend the by-laws?
87. Penalties for violations of by-laws.

§ 153. Adopting By-Laws Without Meeting.—It is sometimes provided by statute that, by unanimous consent in writing, and sometimes by consent of less than all the members or stockholders, by-laws may be adopted without a meeting. But where that course is pursued, great care should be taken that the written consent of every necessary member is obtained, because failure herein as to one member, however small his interest, invalidates the entire proceeding. Such method being a departure from the usual method, should conform exactly to the general law or

charter provision. Such statutes, being in derogation of common law, are strictly construed. In order to avoid dispute and preserve evidence of compliance with the law, the written consent should be explicit.

§ 154. Consent to Adoption of By-Laws.

We, the undersigned, stockholders (or incorporators) of the Company, owning and holding in our names all the subscribed capital stock of said corporation, hereby adopt a code of by-laws for said corporation.

Dated March 1, 1926.

Names.	No. of Shares.
E. P. Jones	20
M. L. Bennett	50
Asa Roberts	400
James Willard	15
A. J. Knox	15

In a few states, a given proportion of the incorporators, less than all, usually two-thirds, may adopt by-laws by written consent. The form is the same as the foregoing, the only difference being that instead of the recital that the signers own and hold all the subscribed stock (or are all the incorporators), they recite that they own and hold more than two-thirds, or constitute more than two-thirds of the incorporators.

§ 155. **By-Laws Informally Adopted.** — By-laws informally adopted may be ratified, or become binding, as by-laws by usage and uniform recognition as by-laws, for a long period.¹² And though a statute provide for the adoption of by-laws only after organization, still, though some of the stockholders sign the by-laws before organization, and even before incorporation, yet it constitutes an agreement which the corporation can enforce.¹³ Again, a corporation may, by acting under a by-law, irregularly adopted, be estopped, as against one who had no notice of any defect from asserting its invalidity.¹⁴ The interpretation of a

¹² *Lockwood v. Mechanics' Nat. Bank*, 9 R. I. 335, 11 A. R. 253; *Kent v. Quicksilver Min. Co.*, 78 N. Y. 159; *State v. Curtis*, 9 Nev. 335, 3 Mor. Min. Rep. 630; *Hagerman v. Ohio B. & S. Assn.*, 25 Ohio St. 186; *Marsh v. Mathias*, 19 Utah 350, 56 Pac. 1074.

¹³ *Vercoutere v. Golden State L. Co.*, 116 Cal. 410, 48 Pac. 375.

¹⁴ *Lockwood v. Mechanics' Nat. Bank*, 9 R. I. 308, 11 A. R. 253.

by-law may undoubtedly be affected to some extent by usage.¹⁵ So, also, a regulation may become established by usage and long acquiescence therein, so as to have all the force and effect of a by-law. Where a particular usage is observed by all engaged in any particular class of business, conducted by a corporation, a requirement or regulation may be binding upon all dealing with it, whether formally adopted as a by-law or not. The doctrine of estoppel has an important application with reference to the binding effect of by-laws, informally adopted. If members attend the meeting at which the question of their adoption is passed upon, remain silent, and do not then and there protest, they are estopped from afterwards claiming that less than the required number of votes were cast in favor of their adoption.¹⁶ So, a member of a mutual insurance company will be estopped from questioning the validity of by-laws existing at the time he became a member, on the mere ground that they were not properly adopted.¹⁷

§ 156. Certification of By-Laws.—In order that by-laws may be valid they must substantially conform to all the statutory or charter provisions bearing on the subject in the state where the corporation is formed. It is sometimes provided by statute in some states, such as California, that all by-laws adopted must be certified by a majority of the directors and the secretary of the corporation and be copied in a legible hand into a book kept in the office of the corporation and known as the book of by-laws.¹⁸ Where a statute requires by-laws to be written in the corporate records and attested, by-laws though written in the records, if not attested, are invalid.¹⁹

§ 157. Certificate to By-laws.—Where a state statute requires that the “by-laws as adopted must be certified by a majority of the directors and secretary,” the certificate may be as follows:

¹⁵ *Henry v. Jackson*, 37 Vt. 431.

¹⁶ *Richardson v. Union Congregational Soc.*, 58 N. H. 183.

¹⁷ *Pfister v. Gerwig*, 122 Ind. 567, 23 N. E. 1041.

¹⁸ California Civil Code, sec. 304; *Powers v. Marine Engineers' Beneficial Assn.*, 52 Cal. App. 551, 199 Pac. 353.

¹⁹ *O'Donnell v. Ontario, etc., Co.*, 11 Up. Can. Q. B. (Eng.) 267. See, also, *Chapman v. Doray*, 89 Cal. 52, 26 Pac. 605.

We, the undersigned, constituting a majority of the directors and the secretary of the Company, do hereby certify that the above and foregoing by-laws, which appear in this by-law book, are the full, true and correct by-laws of said company as adopted at a meeting of the stockholders thereof, held for that purpose, after due notice given therefor, on the 15th day of March, A. D. 1926.

In Witness Whereof, we have hereunto affixed our hands and caused the seal of said corporation to be affixed thereto this day of, 1926.

(Corporate Seal.)

.....

Secretary.

.....

Directors.

§ 158. Amendment and Repeal of By-Laws.—The general rule is that the same body which enacts a by-law has power to repeal it, in the same manner and by the same vote as that by which it was enacted. In some states, this rule is slightly modified. In California, for instance, although a majority vote at the meeting at which is adopted the original by-laws is sufficient, a two-thirds vote is necessary at a meeting at which an amendment or a repeal is proposed. In that state, as in the case of the original adoption, an assent representing two-thirds of the stock without a meeting is effectual for amendment or repeal. Such assent should be as carefully secured as that for the adoption of the original by-laws, and may take a similar form.

Though the power to make by-laws implies the power to alter or repeal them, an amendment of stockholders' by-laws cannot, however, ordinarily be made without notice to stockholders, and it has been held that previous notice must be given to render valid a change at a regular annual corporate meeting, in the by-laws of a corporation, increasing the number of directors.²⁰

The power to alter by-laws, is subject to the same limitation as the making of by-laws, namely, they must be reasonable and not inconsistent with the constitution and the laws of the state. Hence a power reserved to alter, amend or repeal is a power reserved to pass only reasonable by-laws agreeable to law.¹

²⁰ Bagley v. Reno Oil Co., 201 Pa. St. 78, 50 Atl. 760, 56 L. R. A. 184.

¹ Bornstein v. District Grand Lodge, No. 4, 2 Cal. App. 624, 84 Pac. 271.

§ 159. Whether Notice of Intention to Amend Required.—

In states where by-laws may be amended only at a meeting of the members or the stockholders, it has been a disputed question whether by-laws may be altered in material respects at a regular or annual meeting, without notice to the members or stockholders, of an intention to make such alterations. Of course, no such alteration can be made at a special meeting without notice; and the sounder view is that no radical change in the by-laws should be made at a regular meeting without notice, even though such change would, under the statutes in force, be legal. From experience and observation, it is well known that at regular annual meetings only the general routine business of the corporation is transacted. A majority of the stockholders rarely attend in person. Their proxies are given to their agents and attorneys to vote for them on the usual and ordinary questions and matters that arise. The corporation usually passes from one year of its existence into the next with the by-laws regulating its business and management unchanged. If some of the stockholders contemplate action of an unusual or extraordinary character, such, for instance, as an amendment of the by-laws, it is but reasonable that their associates should have notice of it.

§ 160. Amendment by Directors. — The members or stockholders may, in some of the states, confer upon the directors power to amend the by-laws, and this necessarily carries with it authority to enact new ones. Where, however, power to make by-laws on specified subjects is thus conferred upon the directors, either directly by law or through the membership, such by-laws must be confined to the subjects embraced within the scope of that authority. The body of members at large retains incidental power to make by-laws as to matters not so specified. And even though authority to alter or amend by-laws may be conferred upon the directors, they have no power to repeal, alter or disregard a by-law containing a limitation upon their power.² Under the statutes of several states, the board of directors may amend the by-laws in some stated respect upon a resolution in writing, signed by a certain proportion of the stockholders without a

² *Stevens v. Davison*, 18 Gratt. (Va.) 819, 98 A. D. 692; *Brinkerhoff-Farris Trust, etc., Co. v. Home Lumber Co.*, 118 Mo. 447, 24 S. W. 129.

meeting of the latter. Such resolution may be in the following form:

§ 161. Resolution Authorizing Directors to Amend By-Laws.

Resolved, That Section of Article of the by-laws of the Company be amended, so that as amended it shall read as follows:

(Insert the section as amended.)

And be it further resolved that the board of directors of said corporation be and they are hereby requested, directed and authorized to make said amendment, and that this resolution, with our signatures, representing two-thirds of the subscribed capital stock of said corporation, be presented to said board for that purpose.

Dated March 1, 1926.

Names.	No. of Shares.
E. P. Jones	10 shares
W. L. Bennett	25 shares
Asa Roberts	400 shares

The board of directors will then, at a regular meeting, or at a meeting specially called for the purpose, pass a resolution of which the following is a sufficient form:

§ 162. Resolution of Directors Amending By-Laws.

Whereas, A resolution bearing date of March 1, 1926, signed by the holders of more than two-thirds of the subscribed capital stock of this corporation, has been presented to the board of directors of the Company, authorizing and directing that Section of Article of the by-laws be amended;

Now, therefore, be it resolved, in compliance with said resolution, request, authorization and direction therein contained, that said Section of Article of the by-laws of this corporation be amended to read as follows:

(Here insert it.)

And the secretary is hereby directed to copy said section as it is amended, in the book of by-laws immediately following the original by-laws, and to properly certify the same.

So, also, in many states, the power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Such a delegation of power, if conferred by a resolution, may be in the following form:

§ 163. Resolution Giving Directors Unlimited Power to Amend By-Laws.

Resolved, That the board of directors of theCompany, a corporation, be and they are hereby empowered to amend the by-laws of said corporation from time to time, as to said board shall seem fit and proper.

Under the authority conferred by such a resolution the directors may alter the by-laws in any respect they may see fit, within the bounds of the general law.

§ 164. Brief Code of By-Laws.

By-Laws of the New Era Printing Company,
Adopted by the stockholders at their first meeting,
January 15, 1926.

ARTICLE I.—Stockholders' Meetings.

The annual meeting of the stockholders of the company shall be held at the office of the company at No. 50 Printing House Square, in the city of Washington, D. C., on the second Monday in January in each year, at 10 a. m., for the purpose of the election of directors and the transaction of such other business as may lawfully come before the meeting. The notice of such annual meeting shall be given to each stockholder of record appearing on the books of the corporation by sending through the post-office to their addresses appearing on the books, at least five days prior to such meeting, a written or printed notice, signed by the secretary, stating the time and place of the holding of such meeting.

Special meetings of the stockholders other than those provided for or regulated by statute may be called by the board of directors and notice thereof shall be given in the same manner as is provided with respect to the annual meetings, and shall state the purpose for which such meetings are called. All meetings shall be held at the company's office.

ARTICLE II.—Board of Directors.

Section 1. The board of directors shall consist of five stockholders. They shall be elected immediately after the adoption of these by-laws, and annually thereafter at the annual meeting.

Sec. 2. The board of directors shall have the management and control of the business of the corporation, and shall employ such agents and servants as they may deem advisable, and fix the rates of compensation of all officers, agents and employees.

Sec. 3. Whenever any vacancies shall occur in the board of directors, by death, resignation, or otherwise, the same shall be filled without undue delay by the majority vote by ballot by the remaining members of the board. The person so chosen shall hold the office until the next annual meeting, or until his successor is elected and qualified.

Sec. 4. The board of directors shall meet at the office of the company on the first Monday in each month, at 10 a. m., or at such time and in such places as they may by resolution determine.

Sec. 5. The majority of the directors shall constitute a quorum at all meetings of the board.

ARTICLE III.—Officers.

Section 1. The officers of the company shall consist of president, vice president, secretary and treasurer. The office of secretary and treasurer may be held by the same person. The officers shall be elected by the board of directors by a majority vote of the whole number of directors. The first election shall be held immediately after the organization of the board of directors. Subsequent elections shall be held annually on the day of the regular meeting of the board of directors next ensuing the annual election, the day to be fixed by resolution of the board of directors.

Sec. 2. In case of death, resignation or removal of any officer of this company, the board of directors shall elect his successor, who shall hold his office by like tenure for the unexpired term.

ARTICLE IV.—Amendments.

These by-laws may be amended, added to or altered by a two-thirds vote of all the directors at any meeting, or by a majority vote of the stockholders at any annual meeting called for the purpose, but no by-laws regulating the election of directors or officers of the company shall be made within thirty days before any election of the company.

§ 165. Brief Code of By-Laws for Ordinary Business Corporations.

By-Laws of, Inc.

ARTICLE I.

Corporate Powers.

The corporate powers of this corporation shall be vested in a board of three (3) directors, who shall be stockholders, each holding one or more shares of stock in his own name on the books of the corporation, and two (2) shall constitute a quorum for the transaction of business.

ARTICLE II.

Election of Officers.

The directors shall be elected by ballot, at the annual meeting of the stockholders, to serve for one (1) year, and until their successors are elected. Their terms of office shall begin immediately after election.

ARTICLE III.

Vacancies.

Vacancies in the board of directors shall be filled by the other directors in office.

ARTICLE IV.

Powers of Directors.

The directors shall have power to conduct, manage, and control the affairs and business of the corporation.

ARTICLE V.

Duties of Directors.

It shall be the duties of the directors:

- 1st. To cause to be kept a complete record of all their minutes and acts.
- 2nd. To declare dividends out of the surplus profits, when such profits shall, in the opinion of the directors, warrant the same.
- 3rd. To supervise all officers, agents and employees, see that their duties are properly performed, and fix their compensations and terms of office.
- 4th. To cause to be issued to the stockholders, in proportion to their several interests, certificates of stock, not to exceed in the aggregate the authorized capital stock of the corporation.

ARTICLE VI.

Officers.

The officers shall be a president, a vice-president, and a secretary and treasurer, who shall be elected by and hold office at the pleasure of the board of directors.

ARTICLE VII.

President and Vice-President.

The president, and in his absence, the vice-president, shall preside over all the meetings of the stockholders and directors, sign as president all certificates of stock and all contracts and other instruments, which have first been approved by the board of directors, and have, subject to the control of the directors, general direction of the affairs of the corporation.

ARTICLE VIII.

President Pro Tem.

If, at any time, the president and vice-president shall be unable to act, the board of directors shall appoint some other member of the board to do so, in whom shall be vested, for the time being, all the duties and functions of his office.

ARTICLE IX.

Secretary.

The secretary shall keep a record of the proceedings of the board of directors and of the stockholders, the corporate seal, the book of blank certificates of stock, transfer books, the stock ledger and proper account books.

He shall serve or publish all notices required by law or by the by-laws of the corporation; in case of his absence, inability, refusal, or neglect, so to do, such notice may be served by any person directed by the president.

ARTICLE X.

Transfer of Stock.

The shares of the corporation may be transferred at any time by the holders thereof, or by their attorney legally constituted, or by their legal representatives, by indorsement on the certificate of stock. But no transfer shall be valid until the surrender of the certificate and the acknowledgment of such transfer on the books of the company.

No surrendered certificate shall be canceled by the secretary before a new one is issued in lieu thereof, and the secretary shall preserve the certificate so canceled as a voucher. If, however, a new certificate shall be lost or destroyed, the board of directors may order a new certificate issued upon such guarantee by the parties claiming the same as they may deem satisfactory.

ARTICLE XI.

Stockholders' Meetings.

The annual meeting of the stockholders may be held in, California, on the in each year. All stockholders' meetings shall be called by a notice printed in one or more newspapers published in the city of, county of, state of California, or mailed to such stockholders as the directors may direct, at least three (3) days next preceding the day of meeting.

No meeting of the stockholders shall be competent to transact business unless a majority of the subscribed and outstanding stock is represented, except to adjourn from day to day, or until such time as may be deemed proper.

The directors shall call a meeting of the stockholders at any time, upon the request of stockholders holding one-third of all the outstanding stock.

Notice of special meetings of stockholders may be given in the same manner as notices of the annual meeting.

ARTICLE XII.

Directors' Meetings.

The president or two of the directors may call special meetings of the directors at any time, and notice shall be given of each meeting by leaving a written or printed notice at the office of each director, at least one hour before the meeting.

ARTICLE XIII.

Amendments.

These by-laws may be repealed or amended, or new by-laws made or adopted at the annual meeting, or any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed capital stock, or by written assent of the holders of two-thirds of the capital stock, or by a two-thirds vote of the directors at any meeting of said board.

ARTICLE XIV.

Proxies.

Proxies shall be in writing and filed with the secretary.

ARTICLE XV.

Seal.

The company shall have a common seal, consisting of a circle and bearing the words, Inc., incorporated, 19..., California.

Know all men by these presents: That we, the undersigned, being the holders and owners of the entire subscribed capital stock of, Inc., to wit, three (3) shares, hereby assent to the foregoing by-laws of this corporation.

In witness whereof, we have hereunto subscribed our names this day of, 19....

.....
.....
.....

Stockholders

Know all men by these presents: That we, the undersigned directors and secretary of, Inc., do hereby certify that the foregoing by-laws were duly adopted as the by-laws of said corporation, on the day of, 19..., and that the same do now constitute the by-laws of said corporation.

(Seal.)

.....
.....
.....

Directors

.....,
Secretary.

§ 166. Brief Code of By-Laws for Ordinary Business Corporations. [Another set.]

By-Laws of the Company

MEETINGS OF STOCKHOLDERS.

The annual meeting of the stockholders shall be held on the day of, in each year, at the hour of o'clock ... m. of said day. If said day shall be a legal holiday, such meeting shall be held at the same hour on the next succeeding day which is not a legal holiday.

Special meetings of the stockholders may be called at any time by the president or by a director or by the holders of per cent of the shares of stock of the company, and all such calls shall state the purpose of the meeting, and such meeting shall have no power to do any business not stated in the call therefor.

Notice of the day, hour and place of all special meetings of stockholders shall be given by the parties making the call by causing to be delivered

..... days before the time appointed for such meeting, a written or printed, or partially written and partially printed, notice thereof, to the stockholders present; or such notice may be addressed to the stockholder at his address as it appears on the books of the company; or, if his address does not appear on the books of the company and is known to the person or persons making the call, to such known address, or, if the stockholder's address does not appear upon the books of the company and is not known to the person or persons making the call, may be addressed to him at

All notices not personally delivered to the stockholders must be enclosed in a sealed envelope, addressed as above provided, and be deposited in the United States mail, postage prepaid, at least days before the day appointed for such meeting.

DIRECTORS.

The directors shall be elected by ballot, at the annual meeting of the stockholders, to serve for year, and until their successors are elected. Their term of office shall begin immediately after election.

Whenever a director ceases to be the owner of any stock in the company, the board shall at once declare his office as such director vacant, and appoint his successor.

Whenever a vacancy occurs in the office of director, such vacancy must be filled by an appointee of the board, who shall hold office until the next annual meeting of the stockholders, unless his successor be duly elected by the stockholders at a stockholders' meeting.

Regular meetings of the directors shall be held on the in each month throughout the entire year, at the hour of o'clock in the If said day shall be a legal holiday, such meeting shall be held at the same hour on the next succeeding day which is not a legal holiday. Notice of all regular meetings of the directors is hereby dispensed with.

Special meetings of the directors may be called at any time by the president, or upon his order, or by two or more of the directors. Written notice of the time of such special meeting shall be left at least one day prior to the time set for such meeting for each director at his office, if he have one, or at his residence address, if he have one. If a director do not have an address known to the parties calling the special election, such notice may be sent him by inclosing the same in a sealed envelope and depositing it at least two days before the time fixed for such meeting in the United States mail, postage prepaid, addressed to him at the postoffice of the place where the company has its office and principal place of business.

The directors may choose or elect all officers, agents and employees, and may, at their pleasure, remove any of them, at any time, with or without assigning any cause therefor, except a director. They shall supervise and see that their duties are properly performed and fix their compensation and terms of office.

OFFICERS.

At their first meeting, after election to office, the directors shall choose a president and a vice-president from their own number, who shall hold office for one year and until their successors are elected or appointed, unless sooner removed.

At the same time the directors shall choose or appoint a secretary and a treasurer, whose term of office shall be one year, or until their successors are chosen or appointed, unless sooner removed. One person may be chosen or appointed to hold one or more offices.

PRESIDENT.

The president shall preside over all the meetings of the stockholders and directors, sign as president all certificates of stock and all conveyances, contracts and other instruments executed in behalf of the corporation which have first been approved by the board of directors, and he shall have, subject to the control of the directors, general management of the affairs of the corporation.

All powers and duties imposed upon him by law, or these by-laws, may be exercised by him either within or without the state of California.

In the absence of the president and vice-president at a directors' or stockholders' meeting, the directors or stockholders present may choose a president pro tempore to preside at such meeting.

VICE-PRESIDENT.

The vice-president, in the absence or inability to act, of the president, is vested with all the powers, and shall perform all the duties, of the president. In such acts, and in the execution of writing by such vice-president, it shall not be necessary to recite the absence or inability of the president to act.

SECRETARY.

The secretary shall be ex-officio secretary and clerk of the board of directors, and act as secretary of all stockholders' meetings, and shall record all votes and minutes of the proceedings of all meetings in a book or books kept for that purpose.

He shall give all notices required of him by law or by the by-laws of the corporation, or by the order of the president, and he shall perform all other duties required of him by the president or directors. He shall countersign all certificates of stock and attest all deeds of real property and countersign all contracts requiring the signature of the president, countersign all checks, drafts, promissory notes and other obligations of the company unless otherwise ordered by the directors. He shall have the custody of the corporate seal and attach same to any instrument requiring the seal of the corporation thereto.

He shall supervise and control the keeping of accounts and all corporate books of the corporation, and shall furnish statements, balance sheets and such other memoranda under the general control of the president and directors.

TREASURER.

The treasurer shall safely keep all moneys of the corporation which shall come into his hands from time to time and pay out the same upon the checks or drafts of the president, countersigned by the secretary, or otherwise signed in the discretion of the board of directors; he shall keep correct books of account of all transactions of his office and shall generally perform all other duties pertaining to his office, or such as he may be required by the board of directors.

He shall deposit all funds of the company in such bank or banks as may, from time to time, be designated by the board of directors.

FISCAL YEAR.

The fiscal year of this corporation shall begin on the day of of each year.

DIVIDENDS.

Whenever, in the opinion of the board of directors, the net profits or earnings of the company shall be sufficient, the said net profits may be divided among the stockholders of this company according to their respective rights.

Whenever, in the opinion of the board of directors, they shall deem it necessary and proper to cover depreciation and maintenance of the property of the corporation, and to meet other contingencies, they shall have the power to set aside, out of the net profits, before the payment of any dividends or the making of any distribution of profits, such sum as the directors deem necessary and proper, as a reserve fund.

TRANSFER OF SHARES.

The shares of the capital stock of this corporation may be transferred at any time by indorsement by signature of the proprietor, his agent, attorney or legal representative, and the delivery of the certificates; but such transfer is not valid except as to the parties thereto until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of the transfer.

No surrendered certificate shall be canceled by the secretary before a new one is issued in lieu thereof, and the secretary shall preserve the certificate so canceled as a voucher. If, however, a certificate shall be lost or destroyed, the board of directors may order a new certificate issued on such guaranty by the parties claiming the same as they may deem satisfactory.

PUBLICATION OF NOTICES.

The "Evening Tribune," being a newspaper of general circulation, published in the county where the office and principal place of business of this corporation are located, is hereby designated and appointed as the newspaper in which shall be published all notices of meetings of stockholders and directors, and other notices which may be required by law or otherwise to be published.

PROXIES.

All proxies must be in writing, and shall be filed, or offered for filing, with the secretary at least days prior to the meeting at which they are to be used.

AMENDMENTS.

These by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed capital stock, or by the written assent of the holders of two-thirds of the capital stock; or the power to repeal and amend the by-laws and adopt new by-laws may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors.

SEAL.

The company shall have a seal consisting of a circle and bearing the words:

CERTIFICATE OF ADOPTION OF BY-LAWS.

We, the undersigned, being the holders of subscribed capital stock of, to wit, shares, hereby assent to the foregoing by-laws of this corporation.

In witness whereof, we have hereunto subscribed our names this day of, 19....

Name.	Share.
.....
.....
.....

Stockholders.

CERTIFICATE OF DIRECTORS.

We, the undersigned, being a majority of the directors, and secretary of, the above-named corporation, hereby certify that the foregoing original code of by-laws was duly adopted by the written assent thereto of the parties above named, and that said parties subscribed their respective names thereto, and that said subscribers thereof constitute the holders of more than two-thirds of the stock of said corporation. That said code of by-laws constitutes, and is, the code of by-laws of said corporation.

Dated day of, 19....

(Seal.)

.....

Attest:

Directors.

.....
 Secretary.

§ 167. Code of By-Laws for Ordinary Business Corporations

ARTICLE I.—Meeting of Stockholders.

Section 1. The annual meeting of the stockholders of this corporation for the election of the directors or other purposes shall be held at the office of this corporation in the city of, in the county of, state of, on the second Saturday of January of each year; and special meetings of stockholders may be called by the president, vice president, or by a majority of the directors, or by stockholders holding at least one-third of the subscribed capital stock of this corporation. Special meetings of stockholders shall be held at the office of this corporation in said city of

Sec. 2. The call for the annual meetings of stockholders shall be given by either the president, vice president, or secretary of this corporation, and two weeks' notice of such meetings shall be given by advertisement in two daily and one weekly newspapers published in the said city of

Sec. 3. The call for such special meetings of stockholders shall be given by the president, secretary, a majority of the board of directors, or the stockholders representing one-third of the capital stock of the corporation, and two weeks' notice shall be given thereof by advertisement in two daily and one weekly newspapers published in the said city of; also by personal notice mailed to the address of each and every stockholder appearing on the books of this corporation; said notice to be mailed, postage prepaid, at least five days, including Sundays and holidays, before the date fixed for said meeting.

Sec. 4. At all meetings of stockholders the president, or, in his absence, the vice president, and should he be absent, also, any director appointed by the stockholders at the meeting, present, shall preside.

Sec. 5. At all meetings of stockholders, the stockholders representing or holding a majority of the subscribed capital stock shall constitute a quorum for the transaction of business at such stockholders' meeting; and every decision of a majority of said stockholders holding a majority of said subscribed capital stock, duly assembled at such stockholders' meeting, shall be valid as an act of such meeting.

ARTICLE II.—Manner of Conducting Annual Meetings of Stockholders.

Section 1. As soon as the annual meeting of stockholders shall have been organized, the president, or, in case of his absence, the vice president, shall submit his report to the stockholders, which report shall give a full statement of the affairs of the corporation, of any suggestions and recommendations as to the future conduct of the affairs of the corporation, and of such other matters which might be of interest to the corporation and the stockholders.

Sec. 2. After the reading and submission of the report above mentioned, the stockholders shall take action thereon. They may adopt the whole

or any part of the same, and may also reject the whole or any part thereof. Whatever action the stockholders at such meeting may take upon said report, or whatever recommendation the stockholders at such meeting may make upon any matters concerning the affairs of this corporation, shall be a guide and an instruction to the board of directors, and the board of directors shall see that such action and recommendation are followed and carried out.

Sec. 3. After the business mentioned in Sec. 2 of this article shall have been finished, any stockholder may propose an alteration, amendment or repeal of, or supplement to, the by-laws. Before any action on such alteration, amendment, repeal or supplement can be taken, the stockholders so proposing the same shall have the proposed alteration, amendment, repeal, or supplement reduced to writing, and with his name subscribed thereto as the originator thereof, file the same with the secretary of this corporation, who shall have at least ten minutes' notice thereof before the stockholders take action upon the same. The secretary shall thereafter read the proposed alteration, amendment, repeal or supplement to the stockholders at such meetings at length, and the same shall then be acted upon at such meeting; and a decision of the majority of the subscribed capital stock represented, either in person or by proxy, in writing, shall be a valid and binding act upon such proposed alteration, amendment, repeal or supplement.

Sec. 4. The next order of business shall be the election of directors. The directors elected at such election shall assume their duties and qualify as such at the first regular meeting of the directors succeeding such election of directors, and shall hold their offices for one year, and until their successors are elected and qualified.

Sec. 5. After the election of directors, other matters may be acted upon.

Sec. 6. The mode of voting by proxy and voting for any purpose, as prescribed by the statutes of this state on that subject, shall be followed so far as practicable, the same now in force being as follows:

(Here insert the statute or Code provisions governing subject, thus:)
 Section of an act approved day of,
 reads as follows: (inserting it); or Section of the same act
 reads as follows: (inserting it); or Section of the Civil Code
 of this state reads as follows: (inserting it); Section of the
 same Code reads as follows: (inserting it), etc.

Sec. 7. The persons named in the Articles of Incorporation as the directors appointed for the first year shall hold their offices until after the first annual meeting for the election of directors to be held this day, and the newly elected directors shall have qualified and shall assume their duties as prescribed by Sec. 4 of this article.

ARTICLE III.—Directors.

Section 1. The corporate powers, business and property of this corporation shall be exercised, conducted and controlled by a board of nine directors, to be elected from among the holders of stock. All the directors shall be citizens of this state, and every director must be a holder of stock of

this corporation in the amount of twenty-five shares of the capital stock of this corporation. Five directors shall constitute a quorum for the exercise, conduct and control of the powers, business and property of this corporation; and unless a quorum is present and acting, no business performed or act done is valid as an act of this corporation. Whenever a vacancy occurs in the office of director, such vacancy shall be filled by an appointee of the board.

Sec. 2. Immediately upon the adoption of these by-laws the directors elected thereafter, and each year at the time of the first regular meeting of directors succeeding the annual meetings for the election of directors, the directors elected shall organize by the election of a president and a vice-president, of whom both must be of their number, a secretary and a treasurer. The secretary need not be, but the treasurer must be a stockholder of this corporation, but the treasurer must give a bond in an amount to be fixed by the board of directors, and the bond must be approved by such board.

Sec. 3. Regular meetings of the board of directors shall be held at the office of this corporation in the said city of, on the first Monday of each month, at 10 o'clock a. m., and no notice of such meeting need be given to the directors, but they shall take official notice of the time of the holding thereof.

Sec. 4. Special meetings of the board of directors may be held at any time upon the call of the president, or, in his absence or unwillingness to make such call, upon the call of the vice president, and should he be also absent or unwilling to make such a call, upon the call of three directors. Notice thereof of at least two days, if personal, shall be given to the directors; and such notices shall be in writing, signed by either the president, vice-president, secretary, or the directors making such call. Service of notice may also be made by the secretary addressing such notice to each director at his postoffice address, and depositing said notice so addressed in the United States postoffice in said city of, the postage to be prepaid thereon, at least three days before the day fixed for said meeting.

Sec. 5. At all meetings of the directors, the president shall preside; in his absence the vice-president shall preside, and should he also be absent, the director who may at such meeting be appointed by the directors present to act as president pro tem. shall preside.

Sec. 6. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of directors forming such board, made when duly assembled, is valid as a corporate act.

Sec. 7. The directors shall have full power and authority to execute promissory notes of the corporation, with or without interest, and at such rate of interest as they may determine; they may execute interest-bearing bonds of this corporation, the amount and rate of interest of said bonds and notes, and the time when payable, to be left in their discretion, and secure the payment of any such promissory notes and bonds by mortgage upon

the property of the corporation, such mortgages and bonds to be with or without stringent clauses, and clauses for attorney's fees and other matters, all at their discretion. They shall have full power and authority to purchase, sell and let real and personal property (or whatever the general purposes of the corporation, as set forth in the articles, which may be very properly here copied in full), and to that end, and to do and perform all other acts as are stated in the articles of incorporation in that clause thereof giving the purpose for which this corporation is formed, and perform and transact all other business and acts which this corporation, by the laws of this state, is permitted to transact and perform.

Sec. 8. The directors shall have power to employ engineers, attorneys, superintendents, and such other subordinate officers, agents and laborers as in their judgment the business of this corporation may require, prescribe their duties, and allow them suitable compensations, and the power given to corporations by the statutes of this state, are hereby delegated to and conferred upon them.

ARTICLE IV.—Duties of the President and Vice-President.

Section 1. The president, or in his absence the vice-president, shall sign all certificates of stock, preside at all meetings of stockholders and board of directors, and shall do, perform and render such acts and services as the board of directors shall prescribe and require, and shall receive such compensation for services as may be fixed by the directors. Such compensation may be increased or diminished at any time, at the will and pleasure of the directors.

ARTICLE V.—Duties of the Secretary.

Section 1. The secretary shall countersign all certificates of stock, be the custodian of the seal of the corporation, and affix the same to all certificates of stock, papers and instruments requiring such seal; he shall keep the minutes and records of this corporation, the books prescribed by the statutes of this state, and such other books as the directors may require to be kept by him. He shall attend all meetings of directors and stockholders and render such other services as the directors may impose upon him. He shall hold his position during the pleasure of the directors. His compensation shall be fixed by the directors, and the same may be increased or diminished at the pleasure of the directors.

ARTICLE VI.—Duties of Treasurer.

Section 1. The treasurer shall perform such duties as the directors may impose upon him. He shall report the state of the finances of the corporation at each monthly meeting of the directors, and at each annual meeting of the stockholders. He shall hold his office at the pleasure of the directors, and may be removed whenever they determine upon such removal. He shall receive such compensation as the directors may allow, which may be increased or diminished at their pleasure.

ARTICLE VII.—Miscellaneous Matters.

Section 1. Certificates of stock shall be issued to the stockholders

whenever and upon such terms and conditions as may be determined upon by the directors.

Sec. 2. The by-laws may be altered, amended or repealed at any of the regular or special meetings of the stockholders. Should any alteration, amendment or repeal be contemplated at any of the regular meetings, no notice of such alteration, amendment or repeal need be given; but if contemplated at any of the special meetings, notice thereof must be given in the same manner and for the same time as required for annual meetings of stockholders.

Sec. 3. Every director shall be allowed the sum of \$5.00 per day and his legitimate expenses for each day while actively engaged in the affairs of the corporation.

Sec. 4. At all directors' and stockholders' meetings, Cushing's Manual shall establish the rule of procedure unless otherwise provided by these by-laws.

§ 168. By-Laws of a Savings Bank.

ARTICLE I.

CORPORATE POWERS.

Section I. The corporate powers, business, and property of this corporation shall be vested in, and exercised, conducted, and controlled by a board of three (3) directors, who shall be stockholders in the company. A majority of the directors must be, in all cases, residents of the State of.....

ARTICLE II.

OFFICERS.

Section I. The officers of this corporation shall consist of the President, the Cashier, and the Secretary, and such other officers as the board of directors may provide for.

Section II. The amount of salary which each of said officers shall receive, and the manner and times of its payment, shall be fixed and determined by the board of directors and may be altered by said board, from time to time, at its pleasure.

ARTICLE III.

POWERS AND DUTIES OF DIRECTORS.

The board of directors shall have power:

1st. To elect and to remove, at pleasure, all the officers, agents, and employees of the corporation, prescribe such duties for them as may not be inconsistent with these By-Laws and the laws of the State of, fix their compensation and alter the same, from time to time, and require of them security for faithful service.

2ndly. To exercise, conduct, manage, and control the powers, business, affairs, and property of the corporation, and to make such rules and regulations therefor, not inconsistent with these By-Laws and the laws of the State of, as they may deem best.

3rdly. To fix, from time to time, the office of the corporation, and to adopt, make, and use a corporate seal, and to prescribe the form of certificate of stock, and to alter the form of such seal and certificates from time to time, as in their judgment may seem best.

4thly. To issue at such times, in such manner, under such restrictions, and for such purposes as they may deem best, certificates of stock.

5thly. To issue certificates of stock prior to the full payment of the par value thereof, under such restrictions and for such purposes as are hereinafter provided. But such certificate so issued must show, by endorsement on its face, the amount paid thereon.

6thly. To issue receipts for stock showing how much has been paid on account of the same, and agreeing to issue such stock upon full payment.

7thly. To grant, bargain, sell, convey, assign, transfer, lease, let, mortgage, bond, pledge, hypothecate, or otherwise dispose of, from time to time and at any time, all and singular, its said stock, promissory notes, bonds, coupons, due bills, obligations, or other evidence of indebtedness, and any and all property whatsoever belonging to said company, in such amounts, upon such terms and conditions, and in such manner as may, from time to time and at any time, be deemed proper in the judgment of said Board of Directors.

8thly. To claim and demand from the stockholders the sums by them respectively subscribed for the capital stock of this corporation, in such amounts and at such times as said Board may deem proper, and as in these By-Laws provided.

9thly. To levy and collect assessments upon the capital stock of the corporation, in the manner and form, and at the times and to the extent provided by the laws of the State of

10thly. To declare dividends out of the surplus profits, in the manner hereinafter provided.

11thly. To appoint committees of their own body and entrust to such committees the performance of any duties and exercise of any powers hereby, or by law, conferred upon the Board of Directors.

12thly. The Board of Directors shall meet immediately after the annual election and elect from their number a President, a Cashier, and a Secretary, and such other officers as may be deemed necessary. In case there should be no quorum present at the meeting of Directors after the annual meeting, the President shall adjourn the meeting from day to day until a quorum is obtained.

13thly. Generally, to do and perform every act and thing whatsoever that may pertain to the offices of Directors.

ARTICLE IV.

VACANCIES AMONG DIRECTORS.

Section I. Whenever any vacancy shall occur in the office of Director by death, resignation, or otherwise (except by the removal of a Director and the election of his successor as provided by law), it shall be filled by appointment of the Board of Directors, and for that purpose, a majority

of remaining members of the Board is a quorum, and the person so appointed shall hold office for the unexpired term and until his successor is elected.

ARTICLE V.

ELECTION OF DIRECTORS.

Section I. The Directors shall be annually elected by the stockholders at the annual meeting of the stockholders. Their terms of office shall begin immediately after election and shall continue for one (1) year and until their successors shall be elected. All elections for Directors shall be by ballot. At such elections, only those who have been stockholders of record upon the books of the company for at least ten (10) days prior to the day of election shall be entitled to vote. No person shall be entitled to vote upon any shares of stock unless all calls or assessments have been paid upon said shares.

Section II. No person shall be eligible for the office of Director unless he shall be a stockholder of the corporations, owning at least one (1) share of stock therein.

ARTICLE VI.

PRESIDENT.

Section I. The President shall preside at all meetings of the Directors and of the stockholders and appoint committees.

Section II. He shall sign, as President of the bank, all certificates of stock, and all contracts, deeds, leases, evidences of debt, and instruments in writing, except as otherwise provided in the By-Laws.

Section III. He shall call special meetings of the stockholders and of the Board of Directors whenever he deems it advisable, and special meetings of the Directors upon the written request of two (2) members of the Board.

Section IV. He shall, at the annual meeting of the stockholders, make a full report of all the transactions of the past year, which, in addition to a general review of the business of the bank, shall embody such exhibits from property, and profit and loss accounts as to enable stockholders to understand fully the financial condition of the bank at the time of such report.

Section V. If the President is not present at any meeting of the Board of Directors, or of the stockholders, a President pro tem. may be chosen at such meeting.

ARTICLE VII.

PRESIDENT PRO TEM.

In case of the absence, sickness, or death of the President, the President pro tem. shall discharge the duties of said office until the same is filled.

ARTICLE VIII.

CASHIER.

Section I. The Cashier shall, subject to the Board of Directors and the President, have a general control and supervision of the affairs of the

Bank, and shall be authorized generally to do whatever may be legal and necessary in the management of the business of the corporation.

Section II. He shall collect all moneys due and receive all moneys and securities deposited with and belonging to the corporation.

Section III. The President and, subject to his directions and instructions, the Cashier shall have power and authority to sign and issue certificates of deposit, and draw checks and warrants on the bank, and to make loans upon security.

Section IV. They shall each also have full power and authority to make, execute, and deliver receipts, acquittances, satisfaction pieces, or other papers, writings, documents, or other instruments, on behalf of the bank, proper or necessary in the ordinary course of its business.

Section V. The Cashier shall keep a complete set of books showing the transactions of his department. The books, papers, and funds in his hands shall be subject to the inspection of the President or Board of Directors.

Section VI. He shall provide for the form of checks, bills of exchange, and certificates of deposit.

Section VII. The Board of Directors may elect one or more Assistant Cashiers, who shall exercise such of the above powers as may be designated by the Board of Directors or the President.

ARTICLE IX.

SECRETARY.

Section I. The Secretary shall have the custody of the corporate seal of the bank and shall affix the same whenever it is used.

Section II. He shall keep a record of the proceedings of the Board of Directors and of the stockholders, and shall sign the minutes of each meeting.

Section III. He shall keep or cause to be kept a stock book, containing the names of all persons, alphabetically arranged, who are, or who shall become stockholders of the bank, showing the number of shares held by each of them respectively, and the time when each became owner of such shares.

Section IV. He shall prepare for the President or Cashier, from the books in his keeping, such information as the President or Cashier may desire to incorporate in his annual report to the stockholders.

Section V. He shall perform such other duties as the Directors, the President, or Cashier may assign to him.

Section VI. The Cashier may also be Secretary of the corporation.

ARTICLE X.

MEETINGS.

Section I. There shall be a regular annual meeting of the stockholders of the company on the third Monday of September of each and every year, at 11 o'clock a. m., at the office of the corporation in the County of, State of, provided that, should said third Monday fall upon a

legal holiday, said annual meeting shall be held on the next legal day thereafter, at the same time and place.

Section II. At said regular annual meeting, Directors of this corporation shall be elected, to serve for the ensuing year and until their successors are elected.

Section III. Notice of the regular annual meeting of the stockholders shall be given by publication in a newspaper published in the County of for at least two (2) weeks preceding the day of meeting.

Section IV. At all meetings of the stockholders (whether regular, special, or adjourned), persons representing a majority of the subscribed capital stock, either in person or by proxy in writing, shall constitute a quorum.

Section V. At all meetings of the stockholders, each share of the stock shall entitle the owner thereof to three times as many votes as he holds shares of stock. All proxies shall be in writing, subscribed by the person owning or entitled to vote the number of shares represented thereby, and no such proxy shall be valid or confer any right or authority to vote or act thereunder, unless such proxy has been left and filed with the Secretary of this corporation.

Section VI. Any business which might be done at a regular meeting of the stockholders may be done at a special or adjourned meeting.

Section VII. If no quorum be present at any meeting of the stockholders, the meeting may be adjourned by those present from day to day or from time to time, until such quorum shall be obtained, such adjournment and the reasons therefor being recorded in the journal of proceedings of the Board of Directors. If, for any cause, no election of Directors be had at any annual meeting, then such meeting may be adjourned from day to day or from time to time, until such election be had.

Section VIII. All meetings of the Board of Directors shall be held at the office of the corporation in the County of, State of Special meetings of the Board of Directors may be called at any time by order of the President, and the President shall, at any time, call a special meeting upon the written request of two (2) or more of the Directors. Notice of such meeting of the Directors shall be given to each Director by personal service, or by leaving a copy of the notice of said meeting at the last known place of residence or business of such Director at least four (4) hours before such meeting, or by depositing such notice in the United States Post Office, with postage prepaid, addressed to such Director at his last known place of residence or business, at least twenty-four (24) hours before such meeting, or by telegraphic message sent to such Director at his last known place of residence or business at least twelve (12) hours before such meeting, or by telephone message given at least twelve (12) hours before such meeting. The giving of notice in any of the above ways shall be deemed to be and shall be due, legal, and personal notice, and the entry in the minutes of the meeting that notice has been given to any absent Director in any of the ways above mentioned shall be conclusive evidence of the fact of notice.

. Section IX. Any business which might be done at a regular meeting of the Board of Directors may be done at a special or an adjourned meeting.

ARTICLE XI.

STOCK.

Section I. The stock of this corporation shall be issued to the subscribers when fully paid up, and also as provided in Article III, Section I.

Section II. No transfer of stock shall be made without the surrender of certificates, the word "cancelled" shall be written across the face of the certificate by the President, and the signatures of the officers shall be erased, and such certificate shall be preserved by pasting the same to the stub from which it was torn in the certificate book. The Secretary shall make an entry in the books of the corporation so as to show the names of the parties by and to whom stock is transferred, the number of the certificate, and the condition of the share.

ARTICLE XII.

DIVIDENDS.

Section I. The Board of Directors shall, from time to time, fix and establish a rate of interest to be paid to depositors which shall be posted in the bank in a conspicuous place, or they may, at the time a deposit is received, contract for a specified rate of interest. Interest, unless otherwise specified in the contract with the depositor, shall be credited as dividends to the account of each depositor at the end of each half year.

Section II. The dividends so declared shall be credited to each account, and be payable during the six (6) months following the half year for which they may have been declared, in preference to deposits; but thereafter they shall be payable only in the same way as the balances of the accounts to which they may belong; and all dividends not drawn within the first thirty (30) days shall share in the next dividend from the date for which they have been declared.

Section III. No dividends shall be paid upon fractions of dollars nor upon deposit accounts closed between one dividend day and another.

Section IV. Upon all amounts drawn out during any time when the making of new loans is declared suspended on account of excess of applications for repayment of deposits, no interest or dividend will be allowed from and after the date of the last declared dividend.

Section V. The remaining profits of the corporation, after the payment of expenses and dividends to depositors, shall be payable as dividends to the stockholders.

ARTICLE XIII.

SECURITY TO DEPOSITORS.

Section I. The capital stock and other assets of the corporation shall form the security to all depositors, whether stockholders or not, for the amount of their deposits and declared dividends.

ARTICLE XIV.

LOANS AND INVESTMENTS.

Section I. The Directors shall use their best judgment in making loans on the most reliable security, looking first and principally to safety, and in the second place to profits.

Section II. The funds of the corporation shall be employed as follows:

1st. In loans on real estate security for a term not exceeding six (6) years.

2nd. In loans on bullion, mint certificates, evidences of indebtedness of the United States, municipal and corporate bonds, and such other securities as the Board of Directors, under the By-Laws, shall approve.

Section III. The applicant for a loan on real property shall furnish to the Cashier a description of the property to be mortgaged, and a statement of its location. If the Board of Directors is satisfied with the security offered, and approves the loan, the money shall be paid only upon the check of the attorney of the corporation, who shall furnish a certificate that the title is valid, and that the proper documents have been executed.

ARTICLE XV.

AMENDMENT.

Section I. The power to amend these By-Laws is hereby delegated to the Board of Directors, who may amend the same at any regular or special meeting with or without previous notice of the proposed amendment, by a majority vote of the Directors of the corporation.

§ 169. By-Laws of United States Steel Corporation.

ARTICLE 1.

STOCKHOLDERS.

Section 1. Annual Meeting of Stockholders. The annual meeting of the stockholders of the company shall be held annually at the principal office of the company in the state of New Jersey, at twelve o'clock noon on the third Monday of April in each year, if not a legal holiday, and if a legal holiday then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting; and the terms of office of the directors of the several classes shall continue until the election of their successors at such meeting as provided in Article 2 hereof.

It shall be the duty of the Secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding such meeting, in at least one newspaper in each of the following places: Jersey City, N. J.; New York, N. Y.; Chicago, Ill, and Pittsburgh, Pa. Nevertheless, a failure to publish such notice, or any irregularity in such notice, or in the publication thereof, shall not affect the validity of any annual meeting, or of any proceedings at any of such meetings.

Section 2. Special Meetings. Special meetings of the stockholders may be held at the principal office of the Company in the State of New Jersey

whenever called in writing, or by vote, by a majority of the Board of Directors.

Notice of each special meeting, indicating briefly the object or objects thereof, shall by the Secretary be published once in each of the four calendar weeks next preceding the meeting, in at least one newspaper in each of the following places: Jersey City, N. J.; New York, N. Y.; Chicago, Ill., and Pittsburgh, Pa. Nevertheless, if all the stockholders shall waive notice of a special meeting no notice of such meeting shall be required; and whenever all the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken.

Section 3. Quorum. At any meeting of the stockholders, the holders of one-third of all the shares of the capital stock of the company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and, in that case, the representation of the number so required shall constitute a quorum.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 4. Organization. The Chairman of the Board, and in his absence, the Chairman of the Finance Committee, and in the absence of both, the President, shall call the meetings of the stockholders to order, and shall act as Chairman of such meetings. The Board of Directors may appoint any stockholder to act as Chairman of any meeting in the absence of the Chairman of the Board and the Chairman of the Finance Committee, and of the President. The Secretary of the Company shall act as Secretary of all meetings of the stockholders; but in the absence of the Secretary at any meeting of the stockholders the presiding officer may appoint any person to act as Secretary of the meeting.

Section 5. Voting. At each meeting of the stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name at the time of the closing of the transfer books for said meeting. The votes for directors, and, upon demand of any stockholder, the votes upon any question, before the meeting, shall be by ballot.

At each meeting of the stockholders, a full, true, and complete list, in alphabetical order, of all the stockholders entitled to vote at such meet-

ing, and indicating the number of shares held by each, certified by the Secretary or by the Treasurer, shall be furnished. Only the persons in whose name shares of stock stand on the books of the company at the time of the closing of the transfer books for such meeting, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the time of closing the transfer books for such meeting, any proxy may submit his powers of attorney to the Secretary, or to the Treasurer, for examination. The certificate of the Secretary, or of the Treasurer, as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney, shall be received as prima facie evidence of the number of shares represented by the holder of such powers of attorney for the purpose of establishing the presence of a quorum at such meeting and of organizing the same, and for all other purposes.

Section. 6. Inspectors. At each meeting of the stockholders, the polls shall be opened and closed, the proxies and ballots shall be received, and be taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes, shall be decided by three inspectors. Such inspectors shall be appointed by the Board of Directors before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend or refuse or be unable to serve, inspectors in place of any so failing to attend or refusing or unable to attend, shall be appointed in like manner.

ARTICLE 2.

BOARD OF DIRECTORS.

Section 1. Number, Classification and Term of Office. The business and the property of the company shall be managed and controlled by the Board of Directors.

As provided in the certificate of incorporation, the directors shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the Board of Directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years, and the directors of the third class shall be elected for a term of three years. At each annual election, the successors to the directors of the class whose term shall expire in that year, shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of directors shall be twenty-four; but the number of directors may be altered from time to time by the alteration of these by-laws.

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion of the term of one year;

one-third for the unexpired portion of the term of two years, and one-third for the unexpired portion of the term of three years, so that each class of directors shall be increased equally.

Every director shall be a holder of at least one share of the capital stock of the company. Each director shall serve for the term for which he shall have been elected, and until his successor shall have been duly chosen.

At all elections of the directors the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy, or in writing has waived the statutory provision.

Section 2. Vacancies. In case of any vacancy in the directors of any class through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of his successor.

Such vacancy shall be filled upon and after nomination therefor shall have been made by the Finance Committee.

Section 3. Place of Meeting, etc. The directors may hold their meetings and may have an office and keep the books of the company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey or outside of the State of New Jersey as the Board may from time to time determine.

Section 4. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly on the last Tuesday of each month, if not a legal holiday, and if a legal holiday, then on the next succeeding Tuesday not a legal holiday. No notice shall be required for any such regular meeting of the Board.

Section 5. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman of the Board, of the Chairman of the Finance Committee or the President, or of one-third of the directors for the time being in office.

The Secretary shall give notice of each special meeting by mailing the same at least two days before the meeting, or by telegraphing the same at least one day before the meeting to each director; but such notice may be waived by any director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

Section 6. Quorum. Ten directors shall constitute a quorum for the transaction of business; but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Section 7. The affirmative vote of at least one-third of all the directors for the time being in office shall be necessary for the passage of any resolution.

Section 8. Order of Business. At meetings of the Board of Directors business shall be transacted in such order as from time to time the Board may determine by resolution.

At all meetings of the Board of Directors the Chairman of the Board, or in his absence the Chairman of the Finance Committee, or in the absence of both of these officers, the President shall preside.

Section 9. Contracts. Inasmuch as the directors of this company are men of large and diversified business interests, and are likely to be connected with other corporations, with which from time to time this company must have business dealings, no contract or other transaction between this company and any other corporation shall be affected by the fact that directors of this company are interested in or are directors or officers of such other corporations, if, at the meeting of the Board, or of the committee of this company, making, authorizing, or confirming such contract or transaction, there shall be present a quorum of directors not so interested; and any director individually may be a party to, or may be interested in, any contract or transaction of this company, provided that such contract or transaction shall be approved or be ratified by the affirmative vote of at least ten directors not so interested.

The Board of Directors in its discretion may submit any contract or act for approval or ratification, at any annual meeting of the stockholders, or at any meeting of the stockholders called for the purpose of considering any such act or contract; and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the capital stock of the company which is represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding on the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

Section 10. Compensation of Directors. For his attendance at any meeting of the Board of Directors, or of any committee, every director shall receive an allowance of twenty dollars for attendance at such meeting.

Section 11. Election of Officers and Committees. At the first regular meeting of the Board of Directors in each year (at which a quorum shall be present) held next after the annual meeting, the Board of Directors shall proceed to the election of the executive officers of the company, and of the Finance Committee, to be elected by the Board of Directors under the provisions of Article 3 and Article 4 of the By-Laws.

ARTICLE 3.

FINANCE COMMITTEE.

Section 1. The Board of Directors shall elect from the directors a Finance Committee, and shall designate for such committee a Chairman, who shall continue to be chairman of the committee during the pleasure of the Board of Directors.

The Board of Directors shall fill vacancies in the Finance Committee by election from the directors and at all times it shall be the duty of the

Board of Directors to keep the membership of such committee full with due regard to the qualifications for such membership indicated in this article of the by-laws.

All actions of the Finance Committee shall be reported to the Board of Directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the Board of Directors; provided that no rights or acts of third parties shall be affected by any such revision or alteration.

The Finance Committee shall fix its own rules of proceeding, and shall meet where and as provided by such rules, or by resolution of the Board of Directors, but in every case, the presence of at least four members shall be necessary to constitute a quorum.

In every case an affirmative vote of a majority of all the members of the committee present at the meeting shall be necessary to its adoption of any resolution.

Section 2. The Finance Committee shall consist of seven members besides the chairman of the board and the President, each of whom, by virtue of his office, shall be a member of the Finance Committee. So far as practicable, each of the seven elected members of the Finance Committee shall be a person of experience in matters of finance. Unless otherwise ordered by the Board of Directors, each elected member of the Finance Committee shall continue to be a member thereof until the expiration of his term of office and as director.

The Finance Committee shall have special charge and control of all financial affairs of the company. The General Counsel, the Treasurer, the Comptroller, and the Secretary, and their respective offices shall be under the control and the direct supervision of the Finance Committee.

During the intervals between the meetings of the Board of Directors the Finance Committee shall possess and may exercise all the powers of the Board of Directors in the management of all the affairs of the company, including its purchase of property and the execution of legal instruments with or without the corporate seal in such manner as said committee shall deem to be best for the interests of the company, in all cases in which specific directions shall not have been given by the Board of Directors.

During the intervals between the meetings of the Finance Committee and subject to its review, the Chairman of the Board and the Chairman of the Finance Committee, together, shall possess and may exercise any of the powers of the committee, except as from time to time shall be otherwise provided by resolution of the Board of Directors.

Except as otherwise provided by the by-laws, or by resolution of the Board of Directors, all salaries and compensations paid or payable by the company shall be fixed by the Finance Committee.

No director, not an executive officer, shall become a salaried employee of the company, except by special vote of the Finance Committee.

ARTICLE 4.

ADVISORY COMMITTEE.

The Board of Directors shall elect from the directors an Advisory Committee. The Committee shall consist of three members besides the Presi-

dent of the corporation, who by virtue of his office shall be a member and Chairman of the Committee. The Committee from time to time, shall consider and make recommendations concerning such questions relating to manufacturing, transportation, or operation, as may be submitted to the Committee by the President.

ARTICLE 5.

OFFICERS.

Section 1. Officers. The executive officers of the company shall be a Chairman of the Board of Directors, a President, a Vice President, or more than one Vice President, a General Counsel, a Treasurer, a Secretary, and a Comptroller, all of whom shall be elected by the Board of Directors.

The Board of Directors may appoint such other officers as they shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the Board of Directors. One person may hold more than one office.

In its discretion, the Board of Directors, by the vote of a majority thereof, may leave unfilled for any such period as it may fix by resolution any office except those of President, Treasurer, Secretary, and Comptroller.

Section 2. All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole Board of Directors. All officers, agents, and employees, other than officers appointed by the Board of Directors, shall hold office at the discretion of the committee, or of the officer appointing them.

Each of the salaried officers of the corporation shall devote his entire time, skill, and energy to the business of the corporation unless the contrary is expressly consented to by the Board of Directors or the Finance Committee. No vacations shall be taken by any of such officers except by consent of the Board of Directors or the Finance Committee.

The Finance Committee shall have power to remove all officers, agents, and employees of the company, except officers elected or appointed by the Board of Directors.

Section 3. Powers and Duties of the Chairman of the Board. The Chairman of the Board of Directors shall preside at all meetings of the stockholders and of the Board of Directors; and by virtue of his office shall be a member of the Finance Committee. He shall have supervision of such matters as may be designated to him by the Board of Directors or the Finance Committee.

Section 4. Powers and Duties of the President. In the absence of the Chairman of the Board and the Chairman of the Finance Committee, the President shall preside at all meetings of the stockholders and of the Board of Directors. By virtue of his office he shall be a member of the Finance Committee. Subject to the Board of Directors and the Finance Committee he shall have general charge of the business of the corporation relating to mining, and transportation and general operation. He shall keep the Board of Directors and the Finance Committee fully informed,

and shall freely consult them concerning the business of the corporation in his charge. He may sign and execute all authorized bonds, contracts, checks, or other obligations in the name of the corporation, and with the Treasurer or an Assistant Treasurer, may sign all certificates of the shares in the capital stock of the corporation. He shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors.

Section 5. Vice Presidents. The Board of Directors may appoint a Vice President or more than one Vice President. Each Vice President shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors.

Section 6. The General Counsel. The General Counsel shall be the chief consulting officer of the company in all legal matters, and, subject to the Board of Directors and the Finance Committee, shall have general control of all matters of legal import concerning the company.

Section 7. Powers and Duties of Treasurer. The Treasurer shall have custody of all the funds and securities of the company which may have come into his hands; when necessary and proper he shall endorse on behalf of the company for collection, checks, notes, and other obligations, and shall deposit the same to the credit of the company in such bank or banks or depositories as the Board of Directors or the Finance Committee may designate; he shall sign all receipts and vouchers for payments made to the company, jointly with such other officer as may be designated by the Finance Committee; he shall sign all checks, made by the company, and shall pay out and dispose of the same under the direction of the Board or of the Finance Committee; he shall sign with the President or such other person or persons as may be designated for the purpose by the Board of Directors or the Finance Committee, all bills of exchange and promissory notes of the company; he may sign, with the President or a vice president, all certificates of shares in the capital stock; whenever required by the Board of Directors or by the Finance Committee he shall render a statement of his cash account; he shall enter regularly in books of the company to be kept by him for the purpose full and accurate accounts of all moneys received and paid by him on account of the company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company upon application at the office of the company during business hours; and he shall perform all acts incident to the position of treasurer subject to the control of the Board of Directors or of the Finance Committee.

He shall give a bond for the faithful discharge of his duties in such sum as the Board of Directors or the Finance Committee may require.

Section 8. Assistant Treasurers. The Board of Directors or the Finance Committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors or by the Finance Committee.

Section 9. Powers and Duties of Secretary. The Secretary shall keep

the minutes of all meetings of the Board of Directors and the minutes of all meetings of the stockholders, and also (unless otherwise directed by the Finance Committee) the minutes of all committees in books provided for that purpose; he shall attend to the giving and serving of all notices of the company; he may sign with the President, in the name of the company, all contracts authorized by the Board of Directors or by the Finance Committee, and, when so ordered by the Board of Directors, or by the Finance Committee, he shall affix the seal of the company thereto; he shall have charge of the certificate books, transfer books, and stock ledgers, and such other books and papers as the Board of Directors or the Finance Committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the company during business hours; and he shall in general perform all the duties incident to the office of secretary, subject to the control of the Board of Directors and of the Finance Committee. The offices of Secretary and of Treasurer may be held by one and the same person.

Section 10. Assistant Secretaries. The Board of Directors or the Finance Committee may appoint one assistant secretary, or more than one assistant secretary. Each assistant secretary shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors or by the Finance Committee.

Section 11. Comptroller. The Comptroller shall be the principal officer in charge of the accounts of the company, and shall perform such duties as from time to time may be assigned to him by the Board of Directors or the Finance Committee.

Section 12. Voting Upon Stocks. Unless otherwise ordered by the Board of Directors or by the Finance Committee, the Chairman of the Board, or the Chairman of the Finance Committee, shall have full power and authority in behalf of the company to attend and to act and to vote at any meetings of stockholders of any corporation in which the company may hold stock, and at any such meeting shall possess and exercise any and all the rights and powers incident to the ownership of such stock, and which, as the owner thereof, the company might have possessed and exercised if present. The Board of Directors or the Finance Committee by resolution from time to time may confer like powers upon any other person or persons.

ARTICLE 6.

CAPITAL STOCK—SEAL.

Section 1. Certificates of Shares. The certificates of shares of the capital stock of the company shall be in such form not inconsistent with the certificate of incorporation, as shall be prepared, or be approved by the Board of Directors. The certificates shall be signed by the President or a Vice President, and also by the Treasurer or an Assistant Treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares, and the date of issue, shall be entered on the company's books.

No certificate shall be valid unless it is signed by the President or a Vice President, and by the Treasurer or an assistant Treasurer.

All certificates surrendered to the company shall be canceled, and no new certificates shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

Section 2. **Transfer of Shares.** Shares in the capital stock of the company shall be transferred only on the books of the company by the holder thereof in person or by his attorney upon surrender and cancellation of certificates for a like number of shares.

Section 3. **Regulations.** The Board of Directors and the Finance Committee also shall have power and authority to make all such rules and regulations as respectively they may deem expedient concerning the issue, transfer, and regulation of certificates for shares of the capital stock of the company.

The Board of Directors or the Finance Committee may appoint a transfer agent or a registrar of transfers, and may require all stock certificates to bear the signature of such transfer agent and of such registrar of transfers.

Section 4. **Closing of Transfer Books.** The stock transfer books shall be closed for the meetings of the stockholders, and for the payment of dividends, during such periods as from time to time may be fixed by the Board of Directors or by the Finance Committee, and during such periods no stock shall be transferable.

Section 5. **Dividends.** The Board of Directors may declare dividends from the surplus or from the net profits of the company.

The dates for the declaration of dividends upon the preferred stock and upon the common stock of the company, shall be the days by these by-laws fixed for the regular monthly meetings of the Board of Directors in the months of April, July, October, and January in each year, on which days the Board of Directors in its discretion shall declare what, if any, dividends shall be declared upon the preferred stock, and the common stock, or either of such stocks.

The dividends upon the preferred stock, if declared, severally and respectively, shall be payable quarterly on the 30th day of May, of August, of November, and the last day of February in each year.

The dividends upon the common stock, if declared, severally and respectively, shall be payable quarterly, on the 30th day of June, of September, of December, and of March in each year.

If the date herein appointed for the payment of any dividend shall in any year fall upon a legal holiday, then the dividend payable on such date shall be paid on the next day not a legal holiday.

Section 6. **Working Capital.** The directors shall not be required in January in each year, after receiving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits, exceeding the

amount so reserved, and pay the same to such stockholder on demand; but the Board of Directors may fix a sum which may be set aside or reserved over and above the company's capital paid in as a working capital for the company, and from time to time, they may increase, diminish, and vary the same in their absolute judgment and discretion.

Section 7. Corporate Seal. The Board of Directors shall provide a suitable seal containing the name of the company, which seal shall be in charge of the Secretary. If and when so directed by the Board of Directors or by the Finance Committee, a duplicate seal may be kept and be used by the Treasurer or by an assistant secretary or assistant treasurer.

ARTICLE 7.

AMENDMENTS.

Section 1. The Board of Directors shall have power to make, amend, and repeal the by-laws of the company, by a vote of a majority of all of the directors, at any regular or special meeting of the Board, provided that notice of intention to make, amend, or repeal the by-laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of the directors.

§ 169a. By-Laws of an Industrial Corporation.

ARTICLE I.

Office and Seal.

The title of the corporation is

The principal office is at

The corporate seal of the company shall have inscribed thereon the name of the corporation, the state, and the month and year of its creation.

ARTICLE II.

Directors.

The property and business of the corporation shall be managed and controlled by a board of directors, who shall at all times be stockholders. They shall hold office for one year, and until others are elected and qualified in their stead. The number of the first board of directors shall be three, but at any time the number may be increased by vote of the board of directors, and, in case of any such increase, the board of directors shall have power to elect such additional directors to hold office until the next meeting of stockholders, or until their successors shall be elected. If the office of any director becomes or is vacant by reason of death, resignation, disqualification, increase in number, or otherwise, the remaining directors, by a majority vote, may elect a successor, who shall hold office for the unexpired term, or until his successor is elected.

ARTICLE III.

Meetings of Stockholders.

The annual meeting of the stockholders shall be held on the first Monday of April in each year, if not a legal holiday, and, if a legal holiday,

then on the day following, at the registered office of the company, in the state of, commencing at 11 o'clock a. m., when they shall elect by ballot the full board of directors to serve for one year, and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote in person or by proxy for each share of stock standing registered in his name on the tenth day of the month preceding the election; provided, no stock shall be voted which has been transferred within twenty days of the time of the election.

A majority in amount of the stock outstanding shall be requisite to constitute a quorum for an election of directors or the transaction of other business.

The polls for such election shall be open at 12 o'clock noon, and closed at 1 o'clock in the afternoon.

Notice of the annual meeting may be published in a newspaper in the city of once each week during the calendar month next preceding the meeting; but a failure to publish such notice, or any irregularity in the publication or notice, shall not affect the validity of the said meeting or the proceedings therein.

Special meetings of stockholders shall be called by the secretary by mailing a notice at least five days prior to the date of meeting to each stockholder of record at his last known post-office address, on the request in writing, or by vote, of a majority of the board of directors or executive committee, or on demand in writing by stockholders of record owning a majority of the entire issued capital stock of the company.

ARTICLE IV.

Meetings of Directors.

The board of directors shall meet at the office of the company in, immediately after the adjournment of the annual meeting of stockholders, and elect the officers of the corporation for the ensuing year.

Regular meetings of the directors shall be held at the office of the company in, or by order of the directors elsewhere, on a day and at an hour to be fixed by resolution of the board.

Notice of regular meetings shall be mailed to each director at his last known post-office address by the secretary at least three days previous to the time fixed for the meeting.

While the number of directors remains at three, a majority shall be necessary to constitute a quorum for the transaction of business; but if the number of directors shall be increased to fifteen, then six shall constitute a quorum for the transaction of business.

Special meetings of the board may be called by the president on one day's notice to each director, delivered to him personally, or left at his residence or usual place of business; or such special meetings may be called in like manner on the written request of three members.

ARTICLE V.

Compensation of Directors and Executive Committee.

Directors and members of the executive committee, as such, shall not receive any stated salary for their services, but may be allowed \$10 each for attendance at each regular or special meeting, if present at roll call, and until adjournment, unless excused.

ARTICLE VI.

Inspectors of Election.

The board of directors, at a meeting held prior to the annual meeting of the stockholders, shall appoint two stockholders to act as inspectors and conduct the election of directors at the ensuing annual meeting of stockholders. Inspectors of election shall not be eligible to the office of director. If any inspector of election fail to attend the election, a successor may be appointed by the stockholders in attendance.

ARTICLE VII.

Order of Business.

The order of business at the meetings of the board of directors shall be as follows:

- (1) A quorum being present, the chairman shall call the board to order.
- (2) The minutes of the last meeting shall be read and considered as approved if there be no amendments.
- (3) Reports of officers of the company.
- (4) Reports of committees.
- (5) Unfinished business.
- (6) Miscellaneous business.
- (7) New business.

ARTICLE VIII.

Officers of the Company.

The officers of the company shall consist of a chairman of the board, president, first vice-president, second vice-president, secretary, general counsel, treasurer, auditor, and such other officers as may from time to time be elected or appointed by the board of directors.

One person may hold more than one office.

ARTICLE IX.

Officers.

The directors shall elect from among their own number a chairman of the board, a president, a first vice-president, and a second vice-president, and shall also appoint a secretary, treasurer, auditor, and general counsel.

ARTICLE X.

Duties of the Chairman.

It shall be the duty of the chairman to preside at all meetings of the board of directors, and to give such counsel and advice as from time to

time may by him be deemed essential to the best interests of the corporation, to the executive committee, or to the president.

ARTICLE XI.

Duties of the President.

It shall be the duty of the president, in the absence of the chairman of the board, to preside at all meetings of the board of directors; to have general and active management of the business of the company; to see that all orders and resolutions of the board are carried into effect; to execute all contracts and agreements authorized by the board; to keep in safe custody the seal of the company, and, when authorized by the board or executive committee, to affix the seal to any instrument requiring the same, which seal shall always be attested by the signature of the president and of the secretary or the treasurer. He may sign certificates of stock.

He shall have the general superintendence and direction of all the other officers of the company, except the chairman of the board, and shall see that their duties are properly performed.

He shall submit a complete report of the operations of the company for the year, and the state of its affairs on the 31st day of December, to the directors at their regular meeting in April and to the stockholders at their annual meeting in April of each year, and from time to time shall report to the directors all matters within his knowledge which the interests of the company may require to be brought to their notice.

He shall be ex officio a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation.

He shall in a general way be familiar with and exercise supervision over the affairs of the other corporations in which this corporation may be interested.

He shall freely consult and advise with the chairman of the board and also the executive committee in relation to the business and interests of the corporation.

ARTICLE XII.

First Vice-President.

The first vice-president shall be vested with all the powers and required to perform all the duties of the president in his absence. He may sign certificates of stock, and he shall perform such other duties as may be prescribed by the board of directors.

ARTICLE XIII.

Second Vice-President.

The second vice-president shall be vested with all the powers and required to perform all the duties of the president in the absence of both the president and the first vice-president. He may sign certificates of stock, and he shall perform such other duties as may be prescribed by the board of directors.

ARTICLE XIV.

President Pro Tem.

In the absence of the president, first vice-president, and the second vice-president, the board may appoint a president pro tem.

ARTICLE XV.

Secretary.

The secretary shall be ex officio secretary of the board of directors and of the standing committees. He shall attend all sessions of the board, shall act as clerk thereof, and record all votes and the minutes of all proceedings in a book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall give notice of all calls for installments to be paid by the stockholders, and shall see that proper notice is given of all meetings of the stockholders of the company and of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president.

He shall be sworn to the faithful discharge of his duty, and shall give such bond as may be required by the board of directors.

The assistant secretary, if one is appointed, shall be vested with all the powers and required to perform all the duties of the secretary in his absence, inability, refusal, or neglect to act.

ARTICLE XVI.

Treasurer.

The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in the name and to the credit of the company in such depositories as may be designated by the board of directors or executive committee.

He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer, and of the financial condition of the company, and at the regular meeting of the board in April annually a like report for the preceding year.

He shall give the company a bond in form and in a sum and with security satisfactory to the board of directors or the executive committee for the faithful performance of the duties of his office and the restoration to the company, in case of his death, resignation, or removal from office, of all books, papers, vouchers, money, or other property of whatever kind in his possession belonging to the corporation, and containing such other provisions as the board of directors or executive committee may require.

Certificates of stock, when signed by the president or first vice-president or second vice-president shall be countersigned by the treasurer. He shall

keep the accounts of stock registered and transferred in such form and manner under such regulations as the board of directors may prescribe.

The assistant treasurer, if one is appointed, shall be vested with all the powers and required to perform all the duties of the treasurer in his absence, inability, refusal, or neglect to act.

ARTICLE XVII.

Auditor.

The auditor shall have supervision over all the accounts and account books of the company, and see that the system of keeping the same is enforced and maintained.

He shall direct as to forms and blanks relating to books and accounts in all departments, and no change shall be made without his consent, or the consent of the president or executive committee.

He shall see that there is kept in the bookkeeping department a set of books containing a complete record of all business transactions of the company pertaining to accounts.

He shall, when requested, furnish the executive committee or president a statement of the earnings and expenses of the corporation or any other company in which this corporation may be interested for any given time, and shall keep books and records for the purpose of furnishing such statistics.

He shall verify the assets reported by the treasurer or his assistant at least twice a year, and make report of the same to the executive committee.

He shall cause the books and accounts of all officers and agents charged with the receipt or disbursement of money to be examined, and shall ascertain whether or not the cash and vouchers covering the balance are actually on hand.

He shall render such assistance and advice as the president or executive committee may desire concerning the books and accounts and system of financial transactions of all other corporations in which this corporation is interested, and furnish to the president or executive committee such statements concerning the same as may be requested by them.

In case of a default within his information at any time he shall at once notify the president and chairman.

ARTICLE XVIII.

General Counsel.

The general counsel shall be the legal adviser of the company, and shall perform such services and receive such compensation as may be determined by the board of directors or the executive committee.

ARTICLE XIX.

Duties of Officers May Be Delegated.

In case of the absence of any officer of the company, the board of directors or the executive committee may delegate his powers or duties to any other officer or to any director for the time being.

ARTICLE XX.

Executive Committee.

There shall be an executive committee of five directors, selected by the board, who shall meet at regular periods, or on notice to all by any of their own number. They shall advise with and aid the officers of the company in all matters concerning its interests and the management of its business; and when the board of directors is not in session, the executive committee shall have and may exercise all the powers of the board of directors.

The executive committee, unless otherwise provided by the board of directors, shall fix the salaries or compensation of all officers.

The executive committee shall keep regular minutes, and cause them to be recorded in a book kept in the office of the company for that purpose, and report the same to the board of directors whenever required by them.

ARTICLE XXI.

Term of Office.

Each officer shall hold his office only during the pleasure of the board of directors, unless otherwise provided by special agreement in writing signed by a majority of the executive committee.

ARTICLE XXII.

Transfer of Stock.

All transfers of stock of the corporation shall be made upon the books of the company by the holder of the shares in person, or by his legal representative; but no transfer of stock shall be made within ten days next preceding the day appointed for paying a dividend.

ARTICLE XXIII.

Certificate to Be Canceled.

Certificates of stock surrendered shall be canceled by the transfer agent at the time of transfer.

ARTICLE XXIV.

Loss of Certificate.

Any person claiming a certificate or evidence of stock to be issued in place of one lost or destroyed shall make an affidavit or affirmation of that fact, and advertise the same in such newspaper and for such space of time as the board of directors may require, describing the certificate, and shall furnish the company with proof of publication by the affidavit of the publisher of the newspaper, and shall give the board a bond of indemnity in form approved by the board, with one or more sureties, if required, in double the par value of such certificate, whereupon the president and treasurer may, one month after the termination of the advertisement, issue a new certificate of the same tenor with the one alleged to be lost or destroyed, but always subject to the approval of the board of directors.

ARTICLE XXV.

Contracts and Agreements.

No agreement, contract, or obligation (other than a check) involving the payment of money or the credit or liability of the company, for more than \$5,000, shall be made without the approval of the board of directors or of the executive committee.

ARTICLE XXVI.

Checks for Money.

All checks, drafts, or orders for the payment of money shall be signed by the treasurer and countersigned by the chairman of the board or president or first or second vice-president.

No checks shall be signed by both the treasurer and chairman or president or a vice-president in blank.

ARTICLE XXVII.

Books and Records.

The books, accounts, and records of the company shall be open to inspection by any member of the board of directors at all times; and stockholders may inspect the books of the company at such times only as the executive committee or board of directors may by resolution designate.

ARTICLE XXVIII.

Alteration of By-Laws.

The board of directors, by a vote of a majority of the members present at any meeting, may alter or amend these by-laws, but no alteration shall be made unless proposed at a meeting of the board, and considered at subsequent meetings.

ARTICLE XXIX.

Dividends.

The following specific days are hereby fixed for declaring dividends upon the common and preferred stock of the Company, namely: The second Tuesdays in January, February, March, April, May, June, July, August, September, October, November, and December in each and every year; providing, however, that no dividends shall be declared except as permitted by law and by the provisions of the certificate of incorporation of the company; and provided, further, that no dividend shall be declared or paid except from accumulated profits excluding the sum or sums reserved as working capital.

§ 169b. Miscellaneous By-Law Provisions.

Dividends and Working Capital.

DIVIDENDS. Dividends may be declared by the board of directors from time to time out of the surplus or net profits of the company, and shall be payable at such time or times as the board shall determine.

WORKING CAPITAL. Before payment of any dividend, or making any distribution of profits, there may be set aside out of the net profits of the company such sum or sums as the directors may from time to time in their discretion think proper as a working capital or as a reserve fund to meet contingencies, and from time to time the Board of Directors may increase, diminish and vary such working capital or such reserve fund in their absolute judgment and discretion.

Order of Business.

The order of business at all meetings of the Board of Directors shall be as follows:

- (1) Roll call.
- (2) Reading of minutes of last meeting.
- (3) Consideration of communications.
- (4) Resignations and elections.
- (5) Reports of officers and employees.
- (6) Reports of committees.
- (7) Unfinished business.
- (8) Original resolutions and new business.
- (9) Adjournment.

Cash, Notes and Bonds.

CHECKS. Funds of the Company deposited in banks and other depositories to the credit of the Treasurer's Account of Company, shall be drawn from such banks and depositories by checks signed by the President, a Vice-President duly authorized by the Board of Directors so to do, or Treasurer and countersigned by the Auditor, or an Assistant Auditor duly authorized by the Board of Directors so to do. Whenever branches of the Company shall be established the managers of such branches shall deposit all moneys received to the credit of the Company and in its name in such bank or banks and depositories as the Board of Directors may designate. Funds so deposited to the credit and in the name of the Company may be drawn from such places of deposit upon checks signed as hereinbefore provided or by such person or persons as may be duly authorized by the Board of Directors by power of attorney, which said power of attorney shall be duly executed by the President, a Vice-President duly authorized by the Board of Directors so to do, or the Treasurer and attested by the Secretary or an Assistant Secretary under the official seal of the Company.

NOTES AND OTHER EVIDENCES OF INDEBTEDNESS. Notes given by the Company shall be valid only when signed by the President, a Vice-President duly authorized by the Board of Directors so to do, or Treasurer and countersigned by the Auditor or an Assistant Auditor duly authorized by the Board of Directors so to do. Bills receivable, drafts and other evidences of indebtedness to the Company, shall, for the purpose of discount and collection, be endorsed by the President, a Vice-President duly authorized by the Board of Directors so to do, Treasurer, Auditor, or an Assistant Auditor duly authorized by the Board of Directors so to do, or such other

person or persons as the Board of Directors may from time to time authorize so to do.

BONDS. The President, or a Vice-President if such Vice-President be duly authorized by the Board of Directors so to do, or the Treasurer shall have authority to execute bonds in the name of the Company in all legal proceedings in which the Company may be interested as a party. Such bonds shall also be attested by the Secretary or an Assistant Secretary under the official seal of the Company.

Fiscal Year.

The fiscal year of the Company shall begin on the first day of January and end on the thirty-first day of December in each year.

Transfer Agent.

The board of directors shall appoint a transfer agent who shall keep a stock ledger and transfer book for the transfer of the shares of the capital stock. A list of stockholders, with the number of shares of stock held by each set opposite the respective names of the stockholders, certified by the President or Treasurer, shall be sufficient authority to the transfer agent to credit upon the stock ledger to each stockholder the number of shares of stock and the number of the certificates of stock representing the same to which each stockholder is entitled, and, if certificates of stock have not been issued therefor, to issue the same. No new certificates of stock shall be issued by the transfer agent except upon the transfer, surrender and cancellation of old certificates for an equal number of shares of said stock, except, however, in cases where it is claimed that the certificates have been lost or destroyed, in which cases a new issue may be only in accordance with the provisions of these by-laws and the laws of the state of Upon such transfer, surrender and cancellation, the former stockholder shall be debited on the stock ledger with stock transferred and surrendered by him and canceled, and the new stockholder credited upon the stock ledger with the amount of stock transferred to him.

Compensation of Directors.

Directors, as such, shall not receive any stated salary for their services, but by resolution of the Board, a fixed sum, and expenses of attendance if any, may be allowed for attendance at each regular or special meeting of the board; PROVIDED, that nothing herein contained shall be construed to preclude any director from serving the Company in any other capacity and receiving compensation therefor. Members of either standing or special committees may be allowed such compensation as the Directors may determine for attending committee meetings.

Executive Committee.

There may be an Executive Committee of Directors appointed by the Board, who shall meet at regular periods, or on notice to all by any of their own number; they shall advise with and aid the officers of the Company in all matters concerning its interest and the management of its

business, and generally perform such duties and exercise such powers as may be directed or delegated by the Board of Directors from time to time, and they shall have authority to exercise all the powers of the Board when at any time a quorum fails to attend any regular or special meeting thereof. Minutes of the acts and proceedings of the Executive Committee shall be kept in a proper record book by the Secretary, and shall be laid before the Directors at their next meeting.

Resignations.

Any director or other elected officer or member of any Committee except the clerk, may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein. If no time is specified, it shall take effect from the time of its receipt by the clerk, who shall record such resignation, noting the day, hour and minute of its reception. The acceptance of a resignation shall not be necessary to make it effective. The transfer by any Director of all of his stock shall operate ipso facto as a resignation and create a vacancy in his office.

The clerk may resign at any time by filing his resignation with the Register of Deeds in County,, said resignation to take effect from and after the time of its receipt by such Register.

Filling of Vacancies.

If the office of one or more Directors or other officer or one or more of any Committee of the Company becomes vacant by reason of death, resignation, disqualification, or otherwise, the remaining Director or Directors, although less than a quorum, may by a majority vote, choose or appoint a successor or successors, who shall hold office for the unexpired term.

Duties of Officers May Be Delegated.

In case of the absence of any officer of the Company, or for any reason that the board may deem sufficient, the board may delegate the powers or duties of such officer to any other officer or to any Director for the time being, provided a majority of the Directors in office concur therein.

Issue and Transfer of Stock.

The President shall cause to be issued to each stockholder one or more certificates representing the number of shares owned by him in the Company, signed by the President, or Vice-President and by the Cashier, Clerk or Treasurer and bearing the corporate seal. Neither the President nor Treasurer shall sign blanks and leave them for use by the other, nor sign them without a knowledge of the apparent title of the person to whom they are issued. In case of the absence or disability of either of said officers, the signature of a majority of the Directors in his stead is sufficient.

The stock of the Company is transferable only upon its books by the holders of the shares in person or by their legal representatives, and upon such transfer the old certificates shall be surrendered to the Company by delivery thereof to the person in charge of the stock and transfer books

and ledgers, or such other person as the Directors may designate, by whom they shall be canceled, and new certificates shall thereupon be issued. A record shall be made of such transfer and issue. Whenever any transfer shall be made for collateral security and not absolutely the fact shall be so expressed in the entry of said transfer.

The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the statutes of

Loss of Certificate.

Any person claiming a certificate of stock to be lost or destroyed, shall make an affidavit of affirmation of that fact and advertise the same in such manner as the board may require, and shall give the Company a bond of indemnity, in form and with one or more sureties satisfactory to the Board, in at least double the par value of such certificate, whereupon the President and Treasurer may cause to be issued a new certificate of the same tenor with the one alleged to be lost or destroyed, but always subject to the approval of the Board.

Statement of Condition.

The Board of Directors shall present, when called for by the stockholders, a full and clear statement of the business and condition of the Company.

Waiver of Notice.

Any stockholder, officer or Director, may at any time waive any notice required to be given under these by-laws. The presence of a stockholder, in person or by proxy, at any stockholders' meeting, and the presence of a Director in person at any Directors' meeting, shall be deemed such a waiver.

General Manager.

The duties of the General Manager shall be to look after and superintend all mining and manufacturing operations of the Company, and, subject to the approval of the President, to employ all assistants and labor necessary therefor, contract for compensation, and to discharge any person so employed.

He shall make a report to the President and Directors annually, or oftener, if required so to do, setting forth the result of the operations under his charge, together with suggestions looking to the improvement and betterment of the condition of the Company, and perform such other duties as the President or the Board shall require.

Auditor.

The Auditor shall have supervision over all the accounts and account books of the Company, and see that the system of keeping the same is enforced and maintained. He shall direct as to forms and blanks relating to books and accounts in all departments, and no change shall be made

without his consent or the consent of the Chairman, President, or Executive Committee. He shall see that there is kept in the bookkeeping department a set of books containing a complete record of all business transactions of the Company pertaining to accounts, and shall, when requested, furnish the Board, Executive Committee, Chairman or President a statement of the earnings and expenses of the Company, or of any other company in which this Company may be interested, for any given time, and shall keep books and records for the purpose of furnishing such statistics. He shall verify the assets reported by the Treasurer or Assistant Treasurer at least twice a year, and make report of the same to the Board or Executive Committee. He shall cause the books and accounts of all officers and agents charged with the receipt or disbursement of money to be examined as often as practicable, or when requested by the Chairman, President or Executive Committee, and shall ascertain whether or not the cash and vouchers covering the balances are actually on hand. He shall render such assistance and advice as the Chairman, President, Executive Committee or Board may desire concerning the books, accounts and system of financial transactions of all other corporations in which this Company is interested, and furnish to the Chairman, President or Executive Committee such statements concerning the same as may be requested by them. In case of default coming to his knowledge at any time he shall at once notify the Chairman and President.

Amendment of By-Laws

The by-laws of the Company shall be subject to alteration, amendment or repeal by a majority vote of the whole Board of Directors at any regular or special meeting of the Board, provided that notice of such proposed alteration, amendment or repeal shall have been given in writing at the next preceding regular meeting of the Board, or without any such notice by unanimous vote of any meeting of the Board of Directors when all of the Directors are present.

CHAPTER XVII.

STOCK.

- § 170. Definition.
- § 171. Common and Preferred Stock.
- § 172. Nature of Preferred Stock.
- § 173. Nature of the Preference Given.
- § 174. Authority to Issue Preferred Stock.
- § 175. Preferred Shareholders Not Creditors.
- § 176. Issuance of Corporate Stock Without Voting Power.
- § 177. Rights and Liabilities of Preferred Stockholders.
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- § 183. Preferred Stock Clause With No Additional Dividends.
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- § 188. Preferred Stock Clause With Definition of Rights if Stock Is Increased.
- § 189. Preferred Stock Clause With Right of Exchange for Common Stock.
- § 190. First and Second Preferred Stock Clause.
- § 191. Preferred Stock Clause With Preference on Dissolution.
- § 192. Preferred Stock Clause With Preference on Dissolution. [Another Form.]
- § 193. Preferred Stock Clause With Voting Power While Dividends Are Unpaid.
- § 194. Preferred Stock Clause With Right to Choose Certain Class of Directors.
- § 195. "Book Value" of Corporate Stock.

§ 170. Definition.—Capital stock of a corporation is the fund, property or other means contributed, or agreed to be contributed, by the shareholders as the financial basis for the prosecution of the business of the corporation, such contribution being made either directly through stock subscriptions, or indirectly through the declaration of stock dividends.¹

¹ Dodge v. Ford Motor Co., 204 Mich. 459, 170 N. W. 668, 3 A. L. R. 413;

The expression "capital stock," or "authorized capital stock," is capable of use to express different meanings. It may be used to designate the capital stock which the corporation is authorized to have, or the capital stock authorized by the directors to be issued, or, in the case of a public utility, the capital stock authorized by the public utilities commission to be issued in accordance with its regulations.

The capital stock is not the same thing as the capital of a corporation, or its actual property, the value of which may fluctuate from time to time. However much the value of the property of a corporation may be increased in the prosecution of a successful enterprise, or may be diminished by losses incurred, the capital stock remains unchanged.²

Shares of stock in a corporation are only evidence of the right of the holders or owners to share in the proceeds of the corporation's property, and typify an aliquot part of the corporation's property or the right to share in its proceeds, to the extent indicated, when distributed according to law and equity.³

The term "stock" in its true sense and as it will be used herein refers to the "capital stock" whose quantity and kinds must be set out in the articles, in other words, the aggregate number of shares which are given a monetary value in the beginning only for convenience in connection with their original disposal and for the purpose of establishing a standard by which subsequent variations in their real value may be measured. Thus, one having \$10,000 worth of stock in a corporation whose outstanding capital stock is \$25,000, owns 10,000-250,000 or 1/25 of the assets of the corporation. The latter, sometimes erroneously referred to as the "stock," may, however, have an actual value of twice this amount, due to an increase in the value of the plant, surplus and undistributed profits, or the excellence of the bargain made by the promoters in acquiring the corporation property originally. So, also, by a reversal of such conditions, may the corporate assets come to have a value much less than the figures describing the capital stock would indicate. While it is true that in the market the

Commonwealth Bonding, etc., Ins. Co. v. Hollifield (Tex. Civ. App.), 184 S. W. 776; Person v. State Tax Comm'rs, 184 N. C. 499, 115 S. E. 336.

² Armstrong v. Emmerson, 300 Ill. 54, 132 N. E. 768, 18 A. L. R. 693.

³ Randle v. Winona Coal Co., 206 Ala. 254, 89 So. 790, 19 A. L. R. 118.

value of the stock follows the value of the assets, still the capital stock, itself, as a standard by which are measured the rights and the liabilities of the individual stockholders, remains the same.

§ 171. **Common and Preferred Stock.**—In many states are statutes authorizing a preference among stockholders with respect to participation in the profits. Such preference is given and secured by dividing the stock into two or more kinds, called “common” and “preferred,” the holders of the latter being entitled to stated dividends out of any profits which may be earned, even though their payment leave nothing to distribute as profits to the holders of the common stock.

Preferred stock is sometimes spoken of as “guaranteed stock.” But, unless otherwise provided, the preference given to stock, by reason of which it is designated “preferred,” is always guaranteed. That is to say, if for any reason the preferential dividends are not paid in any one year, they accumulate, and are payable, along with the preferred dividends of subsequent years, out of the first available profits, and to the exclusion of the common stock. Such stock should not be confused with ordinary common stock which its holder has had guaranteed, with respect to the receipt of certain dividends, by another corporation, and is sometimes referred to as “guaranteed.” Such is merely an insurance transaction.

The rights of preferred stockholders, like those of common stockholders, depend upon their contract with the corporation, whether such contract is evidenced by a certificate or is found in the by-laws.⁴

In the absence of statutory or contractual provisions giving a preference to preferred stock over common stock in the distribution of the assets, preferred stockholders are on an equal footing with common stockholders.⁵

Preferred stockholders may, however, by agreement be given a

⁴ *Spear v. Rockland-Rockport Lime Co.*, 113 Me. 285, 93 Atl. 754, 6 A. L. R. 793; *Englander v. Osborne*, 261 Pa. St. 366, 104 Atl. 614, 6 A. L. R. 800; *Hewitt v. Linnhaven Orchard Co.*, 90 Ore. 1, 174 Pac. 616; *Stone v. U. S. Envelope Co.*, 119 Me. 394, 111 Atl. 536, 13 A. L. R. 422; *Continental Ins. Co. v. Minneapolis, etc., R. Co.*, 290 Fed. 87, 31 A. L. R. 1320.

⁵ *Continental Ins. Co. v. United States*, 259 U. S. 156, 42 S. Ct. 540, 66 L. Ed. 871.

preference over common stockholders in the capital of a corporation, and such preference will be given effect upon a dissolution of the corporation.⁶

§ 172. Nature of Preferred Stock.—Preferred stock is not an indebtedness of the corporation, or an absolute agreement to pay certain dividends upon its shares, but is merely a pledge of its profits in favor of certain shares in preference to the others, in other words an agreement to give a preference to particular shares over the other shares in the division of profits, but only in case there shall be profits to divide. Hence if it appear in any case that no profits have been earned the holders of preferred stock can not maintain actions against the company to enforce payment of the guaranteed dividends.⁷

Preferred stock is nothing more than ordinary corporate stock, with a right to a dividend before any should be made upon the common stock. Its peculiar and distinguishing characteristic is that it is entitled to a priority over other stock in the distribution of dividends.⁸

§ 173. Nature of the Preference Given.—The statutes of some states limit the nature of the preference which may be given to preferred stockholders. In Michigan, for instance, where the amount of the preferred stock may at no time exceed two-thirds of the capital stock actually paid in,⁹ the preference may not exceed eight per cent per annum, and the by-laws must fix a date for the redemption at par of such stock by the corporation.

In many states, however, the nature of the preference is left to the original incorporators when the articles are filed, or to those who may later, in a manner authorized by statute, alter the amount or the nature of the capital stock. In these latter states, therefore, a great variety of provisions as to the nature of the pecuniary preference given to preferred stock is found.

⁶ *Spear v. Rockland-Rockport Lime Co.*, 113 Me. 285, 93 Atl. 754, 6 A. L. R. 793.

⁷ *Inscho v. Mid-Continent Development Co.*, 94 Kan. 370, 146 Pac. 1041, A. C. 1917B 553.

⁸ *Chaffee v. Rutland R. R. Co.*, 55 Vt. 110.

⁹ *Continental Varnish & Paint Co. v. Secretary of State*, 128 Mich. 621, 87 N. W. 901.

Sometimes the preferred stock is allowed to participate in the profits only to the extent of the preference given it; so that, if the business turns out to be very profitable, it may happen that the common stock demands a higher price in the market than does that which was intended to be preferable. Again, it may be provided that the preferred shall be paid a certain per cent dividend, after which the common stock shall be paid a like dividend, if earned, and that then the two shall share proportionately to their par value in any remaining undistributed profits. In that case the market value of the preferred will be much above that of the common. Still greater will be the discrimination in favor of the preferred where the latter directly and immediately shares with the common in the profits, after receiving the preferential dividend.

Calling stock preferred stock does not *per se* define the rights in such stock, but these depend on the statute or contract under which it was issued.¹⁰

A statute authorizing the issuance of preferred stock, with a preference over common stock as to dividends and assets, does not authorize a corporation to give the holder of such stock a priority over corporate creditors.¹¹

The declaration by a corporation in its certificate of preferred stock, that such stock shall constitute a lien on the property of the corporation, if construed to give the stockholder a preference over creditors, is void as against public policy, unless the corporation is authorized by statute to make such a contract.¹²

Where the holders of preferred stock which, by statute, is made a lien on the property and franchises of a corporation and given a priority over subsequent encumbrancers, by indorsement on the stock waived and postponed the preference over subsequent creditors to any claim against the corporation for money which had or might be loaned the corporation by banks of the city, such banks, though otherwise creditors, were held to be entitled to the preference enjoyed by the preferred stockholder.¹³

¹⁰ *Heller v. National Marine Bank*, 89 Md. 602, 43 Atl. 800, 73 A. S. R. 212, 45 L. R. A. 438.

¹¹ *Smith v. Southern Foundry Co.*, 166 Ky. 208, 179 S. W. 205.

¹² *Kinston Cotton Mills v. Wachovia Bank & T. Co.*, 185 N. C. 7, 115 S. E. 883, 29 A. L. R. 251.

¹³ *Rogers v. Citizens' Nat. Bank*, 93 Md. 613, 49 Atl. 843.

§ 174. **Authority to Issue Preferred Stock.**—In the absence of statutory authority, unless specifically withheld, the issuance of preferred stock may be provided for in an original incorporating instrument,¹⁴ the statutory provisions being more in the nature of limitations upon the power and designed to prevent such preference as may be given from impairing the rights of creditors, or from interfering with the vested rights of the common stockholders. With this latter end in view, a detailed procedure is frequently outlined by statute whereby a corporation already in existence and doing business may after amending its articles issue preferred stock. The general method usually provided by statute for increasing the capital stock is effective for such a purpose.¹⁵ In the absence of a statute permitting a more liberal method, such an issue would not be valid without the unanimous consent of all of the stockholders.¹⁶ Whether the power to borrow money embraces the privilege of doing so by the issue of preferred stock is a mooted question.¹⁷

§ 175. **Preferred Shareholders Not Creditors.**—Preferred shares are shares of the capital stock of the corporation,¹⁸ and the fact that they are given a preference in the division of profits does not permit preferred shareholders to assume the attitude of creditors of the corporation. Until creditors are paid, there are no profits; therefore, no fund to which their preferential rights over holders of common stock can attach. Claims of stockholders, as such, on the "corpus" of the property of the company in which they are stockholders, do not arise until the debts of the company are paid. Until then the shares confer rights merely as regards profits and voting power.¹⁹

¹⁴ *Hazlehurst v. Savannah, etc., R. Co.*, 43 Ga. 13; *Kent v. Quicksilver Min. Co.*, 78 N. Y. 159; *Randle v. Winona Coal Co.*, 206 Ala. 254, 89 So. 790, 19 A. L. R. 118; *Born v. Beasley, Inc.*, 145 Tenn. 64, 235 S. W. 62.

¹⁵ *Hoffman v. Penn. Warehousing, etc., Co.*, 1 Pa. Co. Ct. Rep. 598; *Rutland, etc., R. Co. v. Thrall*, 35 Vt. 536; *Gordon's Ex'rs v. Richmond, etc., R. Co.*, 78 Va. 501, 22 A. & E. R. C. 33.

¹⁶ *Campbell v. American Zylonite Co.*, 122 N. Y. 455, 25 N. E. 853, 11 L. R. A. 596; *Born v. Beasley, Inc.*, 145 Tenn. 64, 235 S. W. 62.

¹⁷ *Hazlehurst v. Savannah, etc., R. Co.*, 43 Ga. 13; *Rutland, etc., R. Co. v. Thrall*, 35 Vt. 545; *Born v. Beasley, Inc.*, 145 Tenn. 64, 235 S. W. 62.

¹⁸ *State v. Norwich, etc., R. Co.*, 30 Conn. 295.

¹⁹ *Warren v. King*, 108 U. S. 389, 2 S. Ct. 789, 27 L. Ed. 769; *State v. Nor-*

As a general rule, the holder of preferred stock in a corporation, like the holder of its common stock, is not a creditor, and hence in the absence of express statutory authority, cannot claim a preference or priority over creditors of the corporation.²⁰ Nor can a corporation, in the absence of statutory authority, as against its prior or subsequent creditors, agree by contract to give priority to its preferred stockholders over its creditors.¹

§ 176. Issuance of Corporate Stock Without Voting Power.

—Although very few cases have passed on the validity of a provision authorizing a corporation to issue stock without voting power, the rule seems to be, however, that in the absence of a constitutional or statutory provision establishing a contrary policy, it is competent for the charter or by-laws of a corporation to deprive the preferred stock of voting power.²

As said in a New York case, unless expressly forbidden by statute, the articles of incorporation may divide the stock into common and preferred, and may provide that the preferred stockholders shall be deprived of voting power in consideration of the preference over the common stock which is given them. Such a provision is but an arrangement between two classes of stockholders, which does not concern the public, and does not violate any rule of the common law or any rule of public policy.³

But on the other hand, where the constitution provides that the general assembly shall provide that in all elections of incorporated companies, every stockholder shall have a right to vote for the number of shares of stock owned by him and for as many persons as there are candidates to be elected, or cumulate his

wich, etc., R. Co., 30 Conn. 295; *Lockhart v. Van Alstyne*, 31 Mich. 76, 18 A. R. 156; *Chaffee v. Rutland R. Co.*, 55 Vt. 110, 16 A. & E. R. C. 408.

²⁰ *Armstrong v. Union Trust and Sav. Bank*, 160 C. C. A. 346, 248 Fed. 268; *Hamblock v. Clipper Lawnmower Co.*, 148 Ill. App. 618; *Kinston Cotton Mills v. Wachovia Bank, etc., Co.*, 185 N. C. 7, 115 S. E. 883, 29 A. L. R. 251; *Star Publishing Co. v. Ball*, 192 Ind. 158, 134 N. E. 285.

¹ *Warren v. Queen & Co.*, 240 Pa. 154, 87 Atl. 595; *Ellsworth v. Lyons*, 181 Fed. 55, 104 C. C. A. 1.

² *Wilson v. Parvin*, 119 Fed. 652, 56 C. C. A. 268; *Randle v. Winona Coal Co.*, 206 Ala. 254, 89 So. 790, 19 A. L. R. 118; *Brewster v. Hartley*, 37 Cal. 15, 99 A. D. 237; *State ex rel. Frank v. Swanger*, 190 Mo. 561, 89 S. W. 872, 4 A. C. 563, 2 L. R. A. (N. S.) 121.

³ *People ex rel. Browne v. Keonig*, 133 App. Div. 756, 118 N. Y. Supp. 136.

shares, preferred stock without voting power cannot be issued by a corporation.⁴

It has been held that the rights of holders of preferred stock are not infringed by the taking from them the voting power under statutory authority, where the corporate charter was granted after adoption of a constitutional provision that the charters of corporations shall be subject to amendment, alteration, or repeal under general laws.⁵

§ 177. Rights and Liabilities of Preferred Stockholders.—

Preferred stockholders, in the absence of any agreement or statute to the contrary, are entitled to vote the same as any other holders of stock.⁶ Some states, however, insure to preferred stockholders equal voting privileges with common stockholders.⁷ Preferred stockholders may bring suit to compel a specific performance of their agreement with the corporation.⁸ They may also maintain a bill to restrain the corporation from paying dividends on common stock until all dividends on preferred stock, including all arrears due, shall have been paid.⁹

As preferred stockholders in general possess the same right as ordinary stockholders, they are at the same time subject to the same liabilities. Holders of preferred stock, are, therefore, subject to the statutory liability, equally with the common stockholders.¹⁰

Where a statute imposing subscriptional liability on corporate stockholders makes no distinction, and creates no priority between stock subscribed for and that which is issued and accepted without being subscribed for, all stockholders to whom was issued stock not paid for, are liable and no distinction can be

⁴ *People ex rel. Watseka Teleph. Co. v. Emmerson*, 302 Ill. 300, 134 N. E. 707.

⁵ *Randle v. Winona Coal Co.*, 206 Ala. 254, 89 So. 790, 19 A. L. R. 118.

⁶ *Lockhart v. Van Alstyne*, 31 Mich. 76, 18 A. R. 156.

⁷ California Civil Code, sections 290, 362.

⁸ *Boardman v. Lakeshore, etc., Ry. Co.*, 84 N. Y. 157.

⁹ *Smith v. Cork, etc., Ry. Co.*, 3 I. R. Eq. 356

¹⁰ *Railroad Co. v. Smith*, 48 Ohio St. 219, 31 N. E. 743; *Star Publishing Co. v. Ball*, 192 Ind. 153, 134 N. E. 285.

made between preferred and common holders without adding something to the statute.¹¹

§ 178. Redemption of Preferred Stock.—As a corporation has no inherent power to redeem preferred stock it cannot do so without express authorization by its charter or by statute.¹² Corporations are, however, frequently given the right to redeem preferred stock, either by statute or by the articles of incorporation.¹³ A provision for redemption of preferred stock is binding upon the holders of such stock,¹⁴ and creditors cannot complain where such provision appears in the articles of incorporation.¹⁵ The right to redeem, however, can be exercised only in conformity with the terms of the contract.¹⁶

Redemption of preferred stock is the retirement of the stock redeemed and is not a purchase of the stock by the corporation and therefore does not violate a statute prohibiting a corporation from purchasing its own stock.¹⁷

§ 179. Resolution Redeeming Preferred Stock.

Resolved, That the Mid-Continent Development Company hereby exercises its option and obligates itself to redeem the preferred stock of this company by paying par value thereof with accrued dividends at the rate of 7 per cent from date of issuance.

Resolved, That the Mid-Continent Development Company shall redeem the preferred stock of this company with accrued dividends; and 75 per cent of the gross earnings which is from now on, be formed into a sinking fund for that purpose to be known as a preferred stock fund and to be kept and maintained for that purpose, which shall be apportioned to the preferred stockholders as often as 25 per cent of the entire amount due is accumulated and this process of distribution shall continue until the

¹¹ *John W. Cooney Co. v. Arlington Hotel Co.*, 11 Del. Ch. 430, 106 Atl. 39, 7 A. L. R. 955.

¹² *Star Publishing Co. v. Ball*, 192 Ind. 158, 134 N. E. 285.

¹³ *Kidd v. Puritana Cereal Food Co.*, 145 Mo. App. 502, 122 S. W. 784; *Weidenfeld v. Northern Pacific R. Co.*, 129 Fed. 305, 63 C. C. A. 537; *Warren v. Queen & Co.*, 240 Pa. 154, 87 Atl. 595.

¹⁴ *Weidenfeld v. Northern Pacific R. Co.*, 129 Fed. 305, 63 C. C. A. 537.

¹⁵ *Mannington v. Hocking Valley Ry. Co.*, 183 Fed. 133.

¹⁶ *Sterling v. H. F. Watson Co.*, 241 Pa. 105, 88 Atl. 297.

¹⁷ *Venner v. Public Utilities Commission*, 302 Ill. 232, 134 N. E. 17.

entire amount of the preferred stock and accrued dividends shall have been paid in full.¹⁸

§ 180. Interest-Bearing Stock.—"Interest-bearing stock" is but another term for one class of preferred stock now little used. A corporation sometimes gives a preference by issuing to a certain class of shareholders ordinary stock containing a promise to pay interest on the par value thereof for a certain period. Such contract has the same effect, to the extent of the preference, as an obligation to give a preference in the matter of dividends, and is enforceable in like manner; the interest can be paid only from profits. Any promise to pay interest, except from profits, renders the promise void, as to creditors prejudiced thereby.¹⁹

§ 181. Treasury Stock.—Stock which has been issued and then purchased by, or donated to, the corporation, is called "treasury stock."²⁰ While the term is also commonly employed to designate the unissued stock as well, it has been held that such stock is not treasury stock.¹

It was held to be against public policy for private corporations to deal in their own shares; but in modern times the rule of the common law on the subject has been relaxed. Such transactions are now generally upheld, provided the rights of creditors are not infringed. The purchase price must come out of profits. To take money received for other stock and purchase stock for the corporation would necessarily and directly impair its capital. Such stock cannot be voted nor can it receive dividends. To pay dividends upon it would be a case of the corporation "taking money out of one pocket and placing it in the other." Moreover, to that extent, it would reduce the amount payable to individual stockholders. It is an asset of the corporation, however, and may be sold by it as other property. Having been fully paid for in the

¹⁸ *Inscho v. Mid-Continent Development Co.*, 94 Kan. 370, 146 Pac. 1014, A. C. 1917B 553.

¹⁹ *Cunningham v. Vermont, etc., R. Co.*, 12 Gray (Mass.) 411; *Lockhart v. Alstyne*, 31 Mich. 76, 18 A. R. 156.

²⁰ *Enright v. Heckscher*, 240 Fed. 863, 153 C. C. A. 549; *Mackey v. Burns*, 16 Colo. App. 6, 64 Pac. 485; *Davies v. Ball*, 64 Wash. 292, 116 Pac. 833, A. C. 1914B 750; *Sherman v. Shaughnessy*, 148 Mo. App. 679, 129 S. W. 245.

¹ *Bivens v. Hull*, 58 Colo. 338, 145 Pac. 694.

first instance, that is, when issued to an individual, it retains that character and may be held below par without involving the purchaser in any liability on that account, differing in this respect from stock issued in the first instance for less than its par value.

This power to issue stock and then convert it into treasury stock may often be very beneficially exercised by a corporation. A corporation formed to develop a new enterprise may issue part or all of its stock for property. The stock having thus become full paid may be donated to the company and sold at less than par, thus furnishing it a working capital. The owners of the property are usually the incorporators, and their faith in the outcome may induce them to donate part of their holdings for this purpose, or the same object may be accomplished otherwise. They may sell all or part of their stock to the corporation, taking in return its promise to pay the purchase price out of future profits. But an agreement binding the corporation to make the payment out of funds derived from the sale of the same identical stock or other stock unissued at the time, would be fraudulent as to all non-consenting stockholders and creditors, and would be set aside and restitution or repayment declared in equity, at the suit of any such interested party.

§ 182. Explanation of Terms Used to Describe Stock.—

Stock is said to be "full paid" when nothing remains due on it from the holder of it to the corporation.

The term "unissued stock" is used to denote the margin between stock already issued and the amount which the corporation may still issue under its charter or articles. It is not treasury stock, strictly speaking, or an asset of the corporation; it cannot be voted, assessed or taxed.

"Overissued stock" is stock issued when prior issues equal or exceed in the aggregate the entire amount provided for in the charter or articles. Such issues are invalid when brought in question by creditors injured thereby; but they may be rendered valid as between the holders thereof and all the other stockholders by unanimous ratification.²

It often happens that as a result of depreciation or poor investment the outstanding stock represents in figures much more

² Green v. Abietine Med. Co., 96 Cal. 322, 330, 31 Pac. 100.

than the aggregate value of all the corporate assets. But it does not follow that it was not honestly and fairly issued in the first instance. The margin is popularly referred to as "water."

"Deferred stock" is simply common stock in a corporation which has issued preferred stock, and is so described because the payment of dividends on it is deferred until the preferred stock has received its proper share.

"Debenture stock" is the name given in the English statutes to what in the United States is called preferred stock.

"Special stock" is the name formerly given in some states to a certain class of what is now termed preferred stock and for some time very generally used to describe such stock.

§ 183. Preferred Stock Clause With No Additional Dividends.

That the total amount of the capital stock of said company is fifty million dollars, the number of shares into which the same is divided is five hundred thousand, and the par value of each share is one hundred dollars. That of this amount, one-half will be preferred stock, and one-half general stock, and that the holders of such preferred stock shall be entitled to receive from the surplus or net profits arising from the business of the corporation a fixed yearly dividend of seven per centum, payable semi-annually on the second days of January and July each year, before any dividends shall be set apart or paid on the said general stock. Should the surplus or net profits arising from the business of the corporation, prior to any dividend day, be insufficient to pay the dividend upon preferred stock, such dividend shall be payable from future profits, and no dividend shall at any time be paid upon general stock until the full amount of seven per centum per annum up to that time upon all the preferred stock shall have been paid or set apart. The holders of preferred stock shall be entitled to no dividends beyond the seven per centum aforesaid.

§ 184. Preferred Stock Clause With Quarterly Dividends.

Said preferred stock shall entitle the holder thereof to receive out of the net earnings, and the company shall be bound to pay a fixed quarterly cumulative dividend of eight per centum, but no more, payable quarterly before any dividend shall be set apart or paid on the common stock. Such preferred stock may be issued as and when the board of directors shall determine, and the vote or assent of the stockholders shall not be necessary for such issue. The holders of preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full both the principal of their shares and the accrued dividends, charged before any amount shall be paid to the holders of the general or common stock.

§ 185. Preferred Stock Clause With Sinking Fund for Redemption.

The holders of the preferred stock shall be entitled to cumulative dividends thereon at the rate of seven per centum for each and every fiscal year of the company, and no more, payable out of any and all surplus or net profits quarterly, half-yearly, or yearly, when declared by the board of directors, and in addition thereto, in the event of the dissolution or liquidation of the corporation, or a sale of all its assets, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares, and all accumulated dividends out of the assets of the corporation, before anything shall be paid therefrom to the holders of the common stock. After providing for the payment of all accumulated dividends upon the preferred stock at the rate of seven per centum for each and every fiscal year of the company, the remaining surplus or net profits, as determined by the board of directors, shall be applied as follows: Twenty-five per centum of such remaining surplus or net profits shall be paid into a sinking fund, in the interests and for the protection of the preferred stock. The directors shall have the right, in their discretion, to use and apply all or any part of such sinking fund, at any time, either for the purchase of additional timber, or timber lands, for the company, or (at any time after three years from the issue thereof), the price of one hundred and twenty dollars for each share, together with all accrued dividends thereon, in such manner, and upon such notice as the by-laws may provide. After providing for the payment of all accumulated dividends upon the preferred stock, at the rate of seven per centum for each and every fiscal year of the company, and after setting aside twenty-five per centum of the remaining surplus or net profits for a sinking fund, as hereinabove provided, the directors may, in their discretion, whenever the remaining surplus or net profits are applicable thereto, declare and pay dividends therefrom upon the common stock. The board of directors may, in their discretion, declare and pay dividends upon the common stock concurrently with dividends upon the preferred stock for any dividend period of any fiscal year, when such dividends shall have been earned, and are applicable to the common stock, provided that all accumulated dividends upon the preferred stock for all previous fiscal years shall have been paid in full and all sinking fund installments shall have been paid or set aside as hereinabove specified. The foregoing provisions for a sinking fund and for the purchase, call, and redemption of preferred stock shall be applicable until all the preferred stock of this company shall have been redeemed; and the methods by, and the manner in which, such provisions shall be exercised shall be determined from time to time by the board of directors, and such determination shall be final and conclusive. Preferred stock redeemed and discharged in accordance with the foregoing provisions shall not be resued.

§ 186. Preferred Stock Clause With Sinking Fund for Redemption and Voting Power.

The holders of the preferred stock shall be entitled to dividends out of the net profits or surplus of the company at the rate of seven per cent per annum, and no more, payable quarterly on the first day of January, April, July, and October in each year, before any dividends shall be set aside or paid upon the common stock, and to priority in payment of principal out of the assets of the company over the common stock for the full face value, together with all arrearages of dividends due thereon. The dividends upon the preferred stock shall be cumulative, so that, if the company shall fail to declare and pay any quarterly dividend, such dividend shall thereafter be declared and paid, or set apart, before any dividend shall be declared, paid upon, or set apart for the common stock. The first dividend on any preferred stock issued prior to December 10, 1926, shall be payable April 1, 1927, for the period of four months, at the rate of \$2.34 per share. The preferred stock may be redeemed or retired in whole but not in part at the option of the company on any dividend date at one hundred and fifteen dollars and accrued dividends. The authorized amount of preferred stock shall not be increased, and the company shall not convey its real estate or mortgage any of its property without the written consent of the holders of three-fourths of the preferred stock then outstanding. The preferred stock shall not be voted at any meeting of the company, except that, if the company shall fail to declare and pay any quarterly dividend thereon, and shall fail to comply with the provisions for the preferred stock sinking fund, and any such failure in either case shall continue for the period of six months, then the holders of the preferred stock shall thereafter have the right, so long as any such failure continues, to vote such stock at any meeting of the company in like manner, and with the same effect as the common stock is voted. No dividend shall at any time be declared, paid upon, or set apart for the common stock if any dividend upon the preferred stock be in arrears, and if there be any default in the preferred stock sinking fund provisions, nor unless the net quick assets as shown by the regular books of account, and inventories of the company, shall actually exceed the par value of the outstanding preferred stock after deducting any such dividend.

A sinking fund for the retirement of the preferred stock by redemption or purchase shall be created out of the net profits of the company that shall remain after deducting therefrom any accrued dividends upon the preferred stock. For that purpose, there shall be credited to an account to be called the preferred stock sinking fund account, within sixty days after the close of each of the calendar years 1927 and 1928, the sum of two hundred thousand dollars, and within sixty days after the close of each calendar year thereafter a sum equal to three per cent of the aggregate of all amounts of preferred stock that shall have been issued subsequent to November 1, 1925, including any of such preferred stock that may have been retired or purchased for redemption. If, however, the cash divi-

dends declared on the common stock during any such calendar year shall exceed in the aggregate the sum of eight hundred thousand dollars, then an amount equal to such excess shall be added to such two hundred thousand dollars, or said three per cent, as the case may be, and credited to the sinking fund for such calendar year; but if the outstanding amount of preferred stock shall have been reduced to five million dollars par value or under, then the sum so to be added to said two hundred thousand dollars or said three per cent shall be an amount equal to any excess of cash dividends declared on the common stock during such calendar year over the sum of one million dollars: If the net profits of any year, after deducting all accrued dividends on the preferred stock, shall not equal said sum of two hundred thousand dollars, or said three per cent respectively, then the whole of such remaining net profits shall be credited to said preferred stock sinking fund. The sinking fund provisions are to be cumulative and contingent only on net profits in excess of the preferred stock cumulative dividends, so that if for any reason the proper sum shall not be duly credited to said sinking fund for any year or the provisions in respect to its use and application shall not be duly complied with, then any deficiency or default shall be made good in subsequent years, before any dividend shall be declared, paid upon, or set apart for the common stock. After the close of each year and during the following month of February, beginning with February, 1928, the company shall give written notice to the registrar of its stock, which shall be a Trust Company in the City of New York, specifying the sums credited to the sinking fund for the preceding calendar year, and any other sums to the credit thereof at the close of such year, and the Registrar shall thereupon, and not later than the 10th day of March following, give notice by mail to the registered holders of preferred stock that sealed proposals will be received for the sale by them to the sinking fund, at the price not to exceed one hundred and fifteen dollars and accrued dividends, of any preferred stock standing in their names respectively to such aggregate amount as can be paid for out of the sum then to the credit of the sinking fund, and that such proposals will be open by the Registrar at its office on a specified date, which shall be not less than twenty-five nor more than thirty days after the mailing of the notice. On the date so set, the Registrar shall open the proposals and give written notice to the company of the contents of the same, and the company shall within ten days thereafter deposit with the Registrar such sum as shall be sufficient to pay for all the preferred stock so offered, to an aggregate amount not exceeding the sum then to the credit of the sinking fund. Thereupon, the Registrar shall give to those whose proposals are entitled to acceptance written notice of the acceptance of their offers for account of the company. The Registrar shall apply the sum received from the company to the purchase of the preferred stock so offered at the lowest prices, not exceeding one hundred and fifteen dollars and accrued dividends, upon the surrender to it within thirty days of the certificates therefor duly endorsed in blank, which it shall forthwith cancel. If any certificates are not so surrendered, the amount received

for their purchase shall be returned to the company, and recredited by it to the sinking fund. In case more preferred stock is offered, at the same price or prices, than can be so purchased, the Registrar, in its discretion, shall purchase pro rata or determine by lot which shares shall be taken, but in such case no fractions of shares shall be purchased, and no holder offering one hundred shares or more shall be required to sell less than one hundred shares, or some multiple thereof. If, on any such notice to the preferred stockholders by the Registrar, no preferred stock shall be offered at or below the price aforesaid, or if the offers shall not be sufficient to exhaust the sum then to the credit of the sinking fund, the company may at its option, at any time within sixty days after the opening of such proposals, direct the Registrar to purchase at public or private sale for account of the sinking fund preferred stock in such amounts and at such prices not exceeding one hundred and fifteen dollars and accrued dividends, as the company may in writing indicate, and it shall thereupon forthwith deposit with the Registrar a sum sufficient therefor. Any sum remaining to the credit of the sinking fund after any such purchases shall continue to the credit thereof until used for the purchase, retirement, or redemption of preferred stock as herein provided. The sinking fund shall not be made the basis of any dividend whatever upon the common or preferred stock, nor shall said fund be depleted in any way except for the purchase, retirement, or redemption of preferred stock, as herein provided; but until so used, any sums to the credit of the sinking fund may be employed in the business of the company. Whenever the amount to the credit of the sinking fund shall be sufficient to redeem and retire the whole of the preferred stock then outstanding at one hundred and fifteen dollars and accrued dividends, or whenever the company shall determine to exercise its option to redeem or retire the whole of the preferred stock then outstanding at one hundred and fifteen dollars and accrued dividends, the company shall immediately give written notice to the Registrar accordingly, and shall, at least one month before the next preferred stock dividend date, deposit the necessary amount with the Registrar for the redemption and retirement of all such preferred stock. The Registrar shall thereupon give notice of such redemption by mail to each registered holder of preferred stock, and publish the same in three newspapers of general circulation in the City of New York twice a week for three weeks before the date of redemption. Thereupon and after such dividend date, the holders of preferred stock shall not be entitled to any further dividends, and the company may thereafter treat such preferred stock as redeemed, retired, and canceled, and the rights of preferred stockholders shall be limited and transferred to said fund which shall be held by the Registrar for account of the holders of the outstanding preferred stock according to their respective interests. Whenever any preferred stock is acquired by the company, whether by operation of the sinking fund or otherwise, the same shall promptly be canceled and retired, and not thereafter be reissued without the written consent of holders of three-fourths of all the remaining preferred stock then outstanding.

§ 187. Preferred Stock Clause With Rights of Redemption and No Voting Privileges.

Of said capital stock three thousand (3000) shares shall be preferred stock, and three thousand (3000) shares shall be general or common stock. From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the Board of Directors and as may be permitted by law. The holders of said preferred stock shall be entitled to receive during each fiscal year out of the net earnings of the company, preferential cumulative dividends at the rate of eight per centum per annum, payable yearly on the first day of April, or in half-yearly or quarterly installments, as the by-laws may from time to time provide. After the payment of the said preferential cumulative dividend of eight per centum for any fiscal year to the holders of the preferred stock any further amount declared in dividends for said year shall be paid to the holders of the common stock at the extent of eight per centum per annum, and should there be any further amount declared in dividends, the said further amount shall be divided pro rata among the holders of the preferred and common stock in accordance with their holdings; provided, however, that the board of directors of the company may in their discretion declare dividends during any fiscal year on the common stock, but no such dividend shall be declared on the common stock unless all cumulative dividends for previous years, and all accrued installments, if any, for the current year, on the preferred stock, shall have been set apart, or paid. From and after the first day of April, 1926, the dividends on said preferred stock shall be cumulative, so that, if in any year dividends amounting to eight per centum per annum shall not be paid on said preferred stock, the deficiency shall be a charge upon the net earnings of the company until paid; but the board of directors may provide at the time of issue of any preferred stock that the dividends thereon shall be cumulative only from the time of such issue. The holders of the preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full the par value of their preferred shares and the dividends accumulated and unpaid thereon, before any amount shall be paid to the holders of the common stock. The holders of preferred stock shall have no voting powers whatsoever, nor shall they be entitled to notice of any meeting of stockholders of the company. Said preferred stock shall be subject to redemption at two hundred dollars per share and accumulated dividends thereon at any time after three years from the issue thereof, at such time or times, and in such manner as the board of directors shall determine.

§ 188. Preferred Stock Clause With Definition of Rights If Stock Is Increased.

The holders of the preferred stock shall be entitled to receive or to have set apart, out of the surplus or net profits of the corporation as and

when declared by the board of directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative on all such preferred stock outstanding at the time, which dividend shall be payable yearly, half-yearly, or quarterly, as the board of directors may from time to time fix and determine, and before any dividends shall be set apart for or paid on the common stock. Provided, however, that if the preferred stock shall hereafter be increased, the rate of dividend on such increase shall be at such rate, not exceeding seven per centum per annum, as shall be fixed by the resolution of the stockholders of the corporation authorizing such increase. Whenever a dividend is declared, or paid on the preferred stock, and all prior dividends on the outstanding shares of such stock shall have been paid or set apart, the board of directors may, if in its judgment the surplus or net profits, after deducting the amount of dividends to accrue on the said outstanding preferred stock during the current year, shall be sufficient for such purpose, then or thereafter declare and pay dividends on the common stock, payable yearly, half-yearly, or quarterly, and payable then or thereafter out of any remaining surplus or net profits of the year then current or last past and of any previous year in which full dividends shall have been paid on the preferred stock.

In case of a liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall receive cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the company, or the proceeds thereof, remaining after the payments in full, at its par value of the preferred stock then outstanding, together with all dividends thereon accrued and unpaid.

§ 189. Preferred Stock Clause With Right of Exchange for Common Stock.

The total authorized capital stock of the corporation is fifty million dollars (\$50,000,000) divided into five hundred thousand (500,000) shares of the par value of one hundred dollars (\$100) each. Of such authorized capital stock two hundred fifty thousand (250,000) shares, amounting to twenty-five million dollars (\$25,000,000) shall be preferred stock and two hundred fifty thousand (250,000) shares, amounting to twenty-five million dollars (\$25,000,000) shall be common stock. The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per cent (7%) per annum, payable quarterly, on dates to be fixed by the by-laws. The dividends on preferred stock to the extent of seven per cent (7%) per annum, and no more, shall be cumulative, and shall be payable before any dividend on common stock shall be paid or set apart, so that, if in any year dividends amounting to seven per cent (7%) shall not have been paid on said preferred stock, the deficiency shall be payable before

any dividends shall be paid or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends upon the common stock, payable then or thereafter, out of the remaining surplus or net profits. After dividends of seven per cent (7%) shall have been paid on the common stock, as above provided, then out of any remaining surplus or net profits, the Board of Directors may declare and pay to the holders of the preferred stock an additional dividend equal to, but not more than one per cent (1%) per annum, which additional one per cent (1%), however, shall not be cumulative. All further or other surplus or net profits (after the payment of eight per cent (8%) on the preferred stock and seven per cent (7%) on the common stock) shall be payable and applicable, as dividends, on the common stock. In event of any liquidation or dissolution, or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid cumulative dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued cumulative dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The holders of the preferred stock shall have the right, upon the first day of May in each year until and including May 1, 1926, to surrender such preferred stock and accept in lieu and in conversion thereof, common stock, such exchange or conversion to be share for share, and to be exclusive of any declared dividends. For the purpose and to the extent of such conversion of preferred stock into common stock, the board of directors are hereby authorized and empowered, from time to time, to increase the common stock of the company and the power to so increase is hereby given and vested in the directors, and any and all other further provisions or formalities required by law for creating such increase as by statute prescribed, being hereby expressly waived. From time to time the preferred stock and the common stock may be otherwise and further increased, according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law; except that no additional preferred stock shall be issued at less than par, for cash, or for property at less than its cash value.

§ 190. First and Second Preferred Stock Clause.

The holders of the first preferred stock shall be entitled to receive when and as declared from the surplus of net profits of the corporation yearly dividends at the rate of seven per cent (7%) per annum, and no more,

payable semi-annually on the dates to be fixed by the by-laws. The dividends on the first preferred stock shall be cumulative, and shall be payable before any dividends on the second preferred stock or the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per cent (7%) shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the second preferred or common stock. Whenever all cumulative dividends on the first preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued semi-annual installment for the current year shall have been declared, and the company shall have paid such declared dividends for the previous years, and such accrued semi-annual installment upon said first preferred stock, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the holders of the second preferred stock shall be entitled to receive when and as declared from the remaining surplus or net profits of the corporation after the payment of the cumulative dividends and accrued semi-annual installment upon the first preferred stock as aforesaid yearly dividends at the rate of seven per cent (7%) per annum and no more, payable semi-annually on dates to be fixed by the by-laws. The dividends on the said second preferred stock shall also be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart, so that if in any year dividends not amounting to seven per cent (7%) shall not have been paid on said second preferred stock, the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock, both first preferred and second preferred, for all previous years shall have been declared, and the company shall have paid such cumulative dividends for previous years upon both said first preferred and second preferred stock in the order aforesaid, and also such accrued semi-annual installments thereon as aforesaid, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof as aforesaid, the board of directors may declare dividends on the common stock payable then or thereafter out of any remaining surplus or net profits. Each share of first preferred, second preferred, and common stock shall have the same voting power in all corporate affairs, and each share thereof shall be entitled to one vote in such affairs, with the power of cumulative voting as conferred by law, and from time to time the first preferred, second preferred, and common stock, or any one or more of said classes of stock may be increased according to law, and may be issued in such amounts and proportions and for such considerations as shall be determined by the board of directors and permitted by law. In the event of any liquidation, dissolution, or winding up, whether voluntary or involuntary, of the corporation, the holders of the first preferred stock shall share equally, and shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the second preferred stock, and, after the payment in full of all unpaid dividends accrued upon, and the

par value of the first preferred stock, then the holders of the second preferred stock shall share equally and be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock, and after the payment in the order aforesaid to the holders of all the preferred stock at its par value and of all the unpaid declared or accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock equally and pro rata according to their respective shares.

§ 191. Preferred Stock Clause With Preference on Dissolution.—In addition to dividend preferences, the owner of preferred stock may be entitled, upon the dissolution of the corporation and a distribution of its assets, to receive assets equal to the par value of his stock before any distribution is made to the common stockholders. Such stock is said to be “preferred as to par value on dissolution.”

The preferred stock shall be entitled, out of any and all surplus, net profits, whenever ascertained, to cumulative dividends, at the rate of 8 per cent per annum in each and every year hereafter, in preference and priority to any payment of any dividends on the common stock for such year. The common stock shall be subject to the prior rights of holders of the preferred stock as herein declared. If, after providing for the payment of full dividends for any year on the preferred stock, and for any balance that may remain due on the cumulative dividends on such preferred stock for preceding years, there shall remain any surplus, net profits, any and all such surplus net profits not in the opinion of the Board of Directors required to provide for the maintenance, improvement, enlargement and operation of the property, and business of the corporation, or for the payment of its liabilities, shall be applicable to dividends upon the common stock for such year, to the extent of, but not exceeding 8 per cent upon the said common stock, when and as from time to time the same shall be declared by the Board of Directors; which dividend upon the common stock shall not be cumulative, but shall only be paid if earned. The remainder of and such surplus net profits shall then be applicable to the payment of further dividends equally per share upon both preferred and common stock. The Board of Directors may declare, and out of such surplus net profits may pay, annual dividends upon the common stock of the said corporation, to the extent of, but not exceeding, eight per cent upon such common stock, but no such dividends shall be declared or paid until the cumulative dividends shall have been paid in full upon the preferred stock for such year, and for all preceding years; and after the payment of such cumulative dividends upon the preferred stock, and such dividends upon the common stock, to the amount of, but not exceeding eight per cent, out of any further surplus net profits the

Board of Directors may declare and pay dividends equally per share upon the preferred and common stock. In case of the dissolution or termination of the corporation, the preferred stock and the holders thereof shall also be entitled to preference in the distribution of the assets and property of the corporation, and any and all such assets and property, in case of such dissolution, shall be applied first to the payment in full of the principal of the said preferred capital stock at par with all cumulative dividends thereon in preference and priority to any payment upon the common stock, and second, to the payment of the principal of the common stock at par; and any balance remaining shall be divided equally per share among the holders of preferred and common stock.

§ 192. Preferred Stock Clause With Preference on Dissolution. [Another Form.]

The total authorized stock of the corporation is eleven hundred million dollars (\$1,100,000,000) divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to \$550,000,000, shall be preferred stock, and 5,500,000 shares, amounting to \$550,000,000, shall be common stock. From time to time, the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the Board of Directors, and as may be permitted by law. The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per centum shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years, and such accrued quarterly installments, and shall have set aside from its surplus and net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution, or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares, and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be

divided and paid to the holders of the common stock according to their respective shares.

§ 193. Preferred Stock Clause With Voting Power While Dividends Are Unpaid.

The total authorized capital stock is to be fifty million dollars (\$50,000,000) divided into five hundred thousand shares of the par value of one hundred dollars each, or of the equivalent in sterling money of great Britain, at the rate of one pound sterling for each four dollars eighty-six and two-thirds cents. Of such total authorized capital stock, two hundred thousand shares, amounting to twenty million dollars (\$20,000,000) or its equivalent in sterling as aforesaid, shall be preferred stock, and three hundred thousand shares, amounting to thirty million dollars (\$30,000,000) or its equivalent in sterling as aforesaid, shall be common stock. The rights, privileges, and conditions following shall attach to the shares aforesaid, viz.:

(a) The preferred stock shall be entitled, out of any and all surplus net profits, whenever declared by the board of directors, to cumulative dividends at the rate of but not exceeding six per cent per annum for each and every year from the issue of such stock, payable half-yearly, in preference and priority to any payment of any dividend on the common stock for such year; the date of payment of the half-yearly dividend to be fixed by the board of directors; any preferred stock issued between dividend dates to be entitled at the next dividend date to a dividend at the rate aforesaid for the broken period. In the event of the dissolution of the corporation, or of a dissolution of the assets or any portion thereof by way of return of capital, the holders of the preferred stock shall be entitled to receive and be paid out of the surplus funds of the corporation or out of the assets so distributed sums up to the par value of their preferred shares before anything shall be paid therefrom to the holders of the common stock. The holders of preferred stock shall not be entitled to any further share in the profits of the company, or to any further payment in the event of dissolution or distribution of assets by way of return of capital than as above provided. The dividends upon the preferred stock shall be cumulative, and if the dividend be not paid or fully paid in any year, said dividend or deficiency as the case may be shall be made up and paid from profits in the subsequent year or years, without interest, and no dividend shall be declared or paid on the remaining stock until such unpaid dividend or deficiency, as the case may be, has been fully made up and paid.

(b) So long as the said dividends on the preferred stock shall be paid half-yearly as aforesaid, the holders of the preferred stock shall have no voting powers on any question, except as below provided, but should any dividend on any preferred stock be not paid when payable, as above provided, and remain so unpaid for a period of three months, then and so long as such dividend or any part thereof remains unpaid, the holders of the preferred stock in respect of which such dividend or part thereof

remains unpaid, shall be entitled to the same voting powers thereon as belong to the common stock, but upon such dividend, or unpaid part thereof, being paid, the voting power upon said preferred stock shall again cease, and so on from time to time as said dividend or part thereof may remain unpaid, after said three months, or may be paid as aforesaid. Provided, always, that upon any question relating to the increase or decrease of preferred capital stock of the company, the holders of preferred stock shall at all times be entitled to the same voting powers as belong to the common stock.

(c) The common stock shall be subject to the prior rights of the holders of the preferred stock as above declared.

If, after providing for the payment of full dividends for any year on the preferred stock, there shall remain any surplus net profits of such year, any and all such surplus net profits of such year, and of any other year for which full dividends shall have been paid on the preferred stock, shall be applicable to dividends upon the common stock when and as from time to time the same shall be declared by the board of directors, and out of any such surplus net profits the board of directors may pay dividends upon the common stock, but not until after the dividends upon the preferred stock have been actually paid or provided for and set apart. In the event of the dissolution of the corporation, or of a distribution of the assets or any portion thereof by way of return of capital, the holders of the common stock shall, after the holders of the preferred stock have received the par value of their preferred shares, be entitled to receive the balance of the surplus funds of the corporation, or of the assets so distributed.

From time to time the preferred and common stock shall be issued in such amounts and proportions as shall be determined by the board of directors, and as may be permitted by law.

§ 194. Preferred Stock Clause With Right to Choose Certain Class of Directors.

The holders of the preferred stock shall be entitled to receive, when and as declared from the surplus and net profits of the corporation noncumulative yearly dividends at the rate of, but not exceeding, four per centum per annum, for the year 1925, and for each and every year thereafter until and including the year 1931; at the rate of, but not exceeding, five per centum per annum for the year 1932, and for each and every year thereafter until and including the year 1938; and at the rate of, but not exceeding six per centum per annum for the year 1939, and for each and every year thereafter; payable quarterly, on dates to be fixed by the by-laws, and in preference and priority to the payment of any dividend on the common stock for such year. The holders of the common stock shall be entitled to receive all other net profits of the corporation which may be distributed as dividends, and such dividends may be declared on the common stock annually, semi-annually, or quarterly, as the Board of Directors may from time to time, in its discretion, determine. In the event of any liquidation or dissolution or winding up (whether voluntary or

involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par amount of their shares before any amount shall be paid to the holders of the common stock; and, after the payment to the holders of the preferred stock of its par value, the remaining assets and funds shall be divided and paid to the holders of the common stock pro rata according to their respective shares. The holders of the preferred stock shall have the right, to the exclusion of the holders of the common stock, to choose directors of the first class, as defined in this certificate of incorporation, but such exclusive right may at any time be surrendered by the affirmative vote of the holders of two-thirds of the preferred stock at the time outstanding, at a special meeting of the holders of the preferred stock called for that purpose, notice of which shall have been given in the manner prescribed at the time by the by-laws for a special meeting of the stockholders. The common stock shall be subject to the prior rights of the preferred stock as declared in this certificate of incorporation.

§ 195. "Book Value" of Corporate Stock.—The "book value" of corporate stock is its net worth as shown by the books of the concern.³ The term means the net worth of all corporate assets less all liabilities, without allowing for the item of good will, unless it is shown clearly to be of certain value.⁴

Book value of stock is ascertained by deducting from the assets, carried on the books, the liabilities and other matters required to be deducted, but where the term used is "book value as shown by the records and books," records of the corporation of every kind and description are the basis of the calculation.⁵

³ *Brookings v. Scudder*, 295 Mo. 494, 246 S. W. 201.

⁴ *Early v. Moor*, 249 Mass. 223, 144 N. E. 108, 33 A. L. R. 362.

⁵ *Gurley v. Woodbury*, 177 N. C. 70, 97 S. E. 754.

CHAPTER XVIII.

ISSUANCE OF STOCK.

- § 196. Power to Issue Stock.
- § 197. By Whom Issued.
- § 198. Effect of Issuance of Certificate for Stock.
- § 199. Compelling Issuance of Certificate for Stock.
- § 200. Cash Subscriptions.
- § 201. Agreement With Broker for Sale of Stock.
- § 202. Payments for Stock in Good Will.
- § 203. Payment for Stock in Services.
- § 204. Payments for Stock in Notes.
- § 205. Payments for Stock in Property.
- § 206. Resolution Accepting Property for Stock.
- § 207. Proposition by Owner to Take Stock of Corporation.
- § 208. Resolution of Acceptance by Stockholders of Proposition of Real Owner.
- § 209. Resolution by Directors Accepting Proposition of Real Owner.
- § 210. Conditional Assignment by Stockholders to Real Owner.
- § 211. Validity of the Issue.
- § 212. Overissued Stock.
- § 213. Remedies Where Stock Has been Overissued.
- § 214. Stock Issued for Less Than Par.
- § 215. Remedies Where Stock Has Been Issued for Inadequate Consideration or for Less Than Par.
- § 216. When Relief Is Barred.

§ 196. **Power to Issue Stock.**—The power to issue the stock of a corporation is limited to that portion of the capital stock which may not yet have been disposed of. It must be issued in such manner, for such consideration, and in such kinds as the articles and the by-laws of the corporation and the statutes of the state permit. It is not one of the implied or incidental powers of a corporation to issue certificates of stock, and such right, if it exist at all, is by virtue of the charter of the corporation or the statute under which it is incorporated.¹ This right is strictly limited in amount to the maximum capitalization named in the certificate of incorporation.²

¹ *Reno Oil Co. v. Culver*, 60 App. Div. 129, 69 N. Y. Supp. 969.

² *Fifth Avenue Bank v. Forty-second Street, etc., Co.*, 137 N. Y. 231, 33 N. E. 378, 33 A. S. R. 712, 19 L. R. A. 331.

§ 197. **By Whom Issued.**—The by-laws generally delegate to the board of directors the power to dispose of the unissued stock of the corporation in such manner, consistent with the general limitations upon the power as just noted, and at such times as in their judgment may seem fit. By resolution they offer it for sale, or make arrangements with others for its sale, and provide for the issuance to purchasers of stock certificates signed by the president and the secretary. In taking a certificate one has a right to rely on the signature of the officers and verity is presumed from the fact that the corporate seal is attached.³ Since the issuance of a certificate is a mere ministerial duty which officers are bound to perform, the signature of a *de facto* officer is sufficient.⁴

§ 198. **Effect of Issuance of Certificate for Stock.**—The issuance by a corporation of a certificate for shares of its capital stock is a declaration to the world that the person named is the owner of the stock called for by the certificate; and a purchaser of the stock, who acquires it in good faith, for value, and in the usual course of business, and to whom the certificate, properly indorsed, is delivered, is entitled to be recognized by the corporation as the owner of the stock.⁵

§ 199. **Compelling Issuance of Certificate for Stock.**—In the matter of a suit brought by a stockholder against a corporation to compel it to issue a certificate for the shares of stock owned by him in such corporation and for the accounting for dividends to which he is entitled on his stock, equity has jurisdiction; and if there is any valid reason why this relief cannot be given, equity will grant alternative relief by way of damages.⁶

While the cases are in conflict upon the question whether the remedy by mandamus may be employed to compel the issuance of

³ Green v. Caribou Oil Min. Co., 179 Cal. 787, 187 Pac. 950.

⁴ Sherwood v. Wallin, 154 Cal. 735, 99 Pac. 191.

⁵ Garrett v. Kingsville First State Bank (Tex. Civ. App.), 192 S. W. 313; Cattlemen's Trust Co. v. Swearingen (Tex. Civ. App.), 200 S. W. 596.

⁶ St. Romes v. Levee Steam Cotton-Press Co., 127 U. S. 614, 8 S. Ct. 1335, 32 L. Ed. 289; Cattlemen's Trust Co. v. Swearingen (Tex. Civ. App.), 200 S. W. 596; Gallatin County Farmers' Alliance v. Flannery, 59 Mont. 534, 197 Pac. 996; E. A. Bradford Undertaking Co. v. King, 206 Ala. 158, 89 So. 705.

certificates of stock of a private corporation, the better reasoning is against the use of the extraordinary writ.⁷ In some jurisdictions, however, mandamus will lie.⁸ For failure to issue and deliver the stock the measure of damages is the value of the stock at the time of the breach of the contract.⁹

§ 200. **Cash Subscriptions.**—If cash with which to develop properties already acquired or projects otherwise ready for development is needed, the corporation may either directly invite subscriptions, getting out advertisements and prospectuses, or place its stock in the hands of some broker with exclusive privileges of sale for a limited period. Cash paid in hand for issued stock makes that stock no different and no more valuable than though it were properly issued for labor done or issued in exchange for property received by the corporation.¹⁰

§ 201. Agreement With Broker for Sale of Stock.

Whereas, the undersigned Phoenix Oil Company is desirous of securing either a purchaser of all the stock of the Osage Oil Company and a controlling interest in the stock of the Phoenix Oil Company, which companies together control the Indian lease of the Osage Nation; or securing a financial negotiation whereby the said Phoenix Oil Company can more fully develop the territory embraced in the said Indian lease; James T. Cantwell is hereby authorized by the said Phoenix Oil Company to secure either a purchaser for said stock or sufficient capital for the development above referred to. In the event that the said James T. Cantwell should sell to or introduce parties with whom such a financial arrangement or sale is actually effected, said James T. Cantwell is to receive from the Phoenix Oil Company a commission of twenty (20) per centum, on any sums received by the Phoenix Oil Company in such transaction, whether in money, stock, bonds, or other securities. At all times, however, the Phoenix Oil Company is to have the privilege of seeking elsewhere for a purchaser of funds to develop as aforesaid, without any liability to the said James T. Cantwell in the event that negotiations are concluded with parties other than those introduced by said James T. Cantwell.

PHOENIX OIL COMPANY.

Walter R. Demar, President.

Henry U. Reiter, Secretary.

JAMES T. CANTWELL.

⁷ *State v. Jumbo Extension Min. Co.*, 30 Nev. 192, 94 Pac. 74, 133 A. S. R. 715, 16 A. C. 896.

⁸ *Motex Oil Corporation v. Taylor* (Tex. Civ. App.), 233 S. W. 520.

⁹ *Davis v. Lime Cola Bottling Works*, 18 Ala. App. 562, 93 So. 328.

¹⁰ *Smith v. Ferries, etc.*, R. Co., 5 Cal. Unrep. 889, 51 Pac. 710.

§ 202. **Payments for Stock in Good Will.**—Though the value of good will is capable of being measured in money,¹¹ and is property for which corporate stock may be issued under laws requiring stock to be issued for property,¹² it must be an existing thing of some value; the mere fact that a business turned into a corporation organized to take it over is a going concern does not show that there is a good will of value.¹³ In the absence of evidence to show the value of the good will thus transferred to the corporation, it cannot be held to be a payment for the stock.¹⁴ Nor, as against creditors, can stock be issued in payment for the good will of a business which has not made any money.¹⁵ Nor can prospective profits in a corporation being organized be capitalized.¹⁶

§ 203. **Payment for Stock in Services.**—In some states a corporation may receive in full payment for stock the performance of labor or services,¹⁷ and where the contrary is not made to appear, it will be presumed that the transaction is perfectly fair.¹⁸ But when the stock is not paid for in fact, either in money, property, or services, equity will not regard a fictitious arrangement by which it is issued as fully paid up, and will inquire into the actual transaction, including the actual value of the property or services which were received as payment.¹⁹

¹¹ *Brown v. Weeks*, 195 Mich. 27, 161 N. W. 945; *White, Corbin & Co. v. Jones*, 79 App. Div. 373, 79 N. Y. Supp. 583, 12 A. C. 277.

¹² *Foote v. Bowman*, 210 Ill. App. 631; *Hills v. Skagit Steel & Iron Works*, 122 Wash. 22, 210 Pac. 17.

¹³ *William E. Dee Co. v. Proviso Coal Co.*, 290 Ill. 252, 125 N. E. 24; *Fox v. Produce Cold Storage Exch.*, 192 Ill. App. 301.

¹⁴ *Re: Schuylkill Heim Brewing Co.*, 208 Fed. 70.

¹⁵ *Joseph T. Ryerson & Son v. Peden*, 303 Ill. 171, 135 N. E. 423.

¹⁶ *See v. Heppenheimer*, 69 N. J. Eq. 36, 61 Atl. 843.

¹⁷ *Winters v. Lindsay*, 52 Cal. App. 93, 198 Pac. 43; *Brown v. National Electric Works*, 168 Cal. 336, 143 Pac. 606; *Vineland Grape Juice Co. v. Chandler*, 80 N. J. Eq. 437, 85 Atl. 213, A. C. 1914A 679; *Rich v. State Nat. Bank of Lincoln*, 7 Neb. 201, 29 A. R. 382; *Tilden v. Barber*, 268 Fed. 587; *Harn v. Smith*, 85 Okla. 137, 204 Pac. 642; *Krebs v. Oberrender*, 274 Pa. 154, 118 Atl. 19.

¹⁸ *Turner v. Fidelity Loan Concern*, 2 Cal. App. 122, 83 Pac. 62, 70.

¹⁹ *Webster v. Webster Refining Co. of Okmulgee*, 36 Okla. 168, 128 Pac. 261, 47 L. R. A. 697.

¹⁹—Corp. Management

A limitation on the issuance of stock except for money paid, labor done, or property actually received, has reference to labor performed for the company after its incorporation, and does not embrace services in promoting the corporation.²⁰ Under such limitation, however, it has been held that stock cannot legally be issued for services to be rendered in the future.¹

§ 204. Payments for Stock in Notes.—The practice has been pursued not infrequently for subscribers to give and the corporation to receive promissory notes in payment of sums due upon subscriptions. In the absence of statutory provisions such notes are held ordinarily to be valid and binding upon the subscribers.² And a note has been held to be “property” and so not to come within a constitutional prohibition against a corporation issuing stock except for money, labor done, or money or property actually received.³

In some jurisdictions it has been held, however, that the note of a stock subscriber accepted by a corporation in payment for the stock issued to him, is not to be regarded as “property actually received” within the meaning of a constitutional provision limiting the issuance of stock to property actually received, on the theory that the corporation receives nothing but another evidence of the subscriber’s indebtedness in a different form.⁴ While it has been held that a promissory note is not money paid,⁵ it has been held to be property received within the meaning of a constitutional provision where the note was amply secured.⁶

²⁰ *Kirkup v. Anaconda Amusement Co.*, 59 Mont. 469, 197 Pac. 1005, 17 A. L. R. 441.

¹ *Bowen v. Imperial Theatres*, 13 Del. Ch. 120, 115 Atl. 918; *Palmer v. Scheftel*, 194 N. Y. App. Div. 682, 186 N. Y. Supp. 84.

² *Goodrich v. Reynolds*, 31 Ill. 490, 83 A. D. 240; *Keller v. Johnson*, 11 Ind. 337, 71 A. D. 355; *Stockmens’ Guaranty & Loan Co. v. Sanchez*, 26 N. M. 499, 194 Pac. 603; *Gallatin County Farmers’ Alliance v. Flannery*, 59 Mont. 534, 197 Pac. 996.

³ *German Mercantile Co. v. Wanner*, 25 N. D. 479, 142 N. W. 463, 52 L. R. A. (N. S.) 453; *Quartz Glass, etc., Co. v. Joyce*, 27 Cal. App. 523, 150 Pac. 648.

⁴ *Washer v. Smyer*, 109 Tex. 398, 211 S. W. 985.

⁵ *Lofland v. Cahall*, 13 Del. Ch. 384, 118 Atl. 1.

⁶ *Lone Star Life Insurance Co. v. Shield* (Tex. Com. App.), 228 S. W. 196; *Western Nat. Bank v. Spencer*, 112 Tex. 49, 244 S. W. 123.

§ 205. **Payments for Stock in Property.**—The procurement of cash subscriptions is the natural, and ordinary, but only one of the methods of promoting or financing a corporation from its inception. At the present day, many corporations are started otherwise than upon the basis of outright cash subscriptions, as the only dependence for procuring capital to commence business.

Corporations are often formed to take over property, improved or unimproved, and to either develop it to a state of productiveness and then sell it, or operate it upon improved plans, or operate it as previously operated for a profit. One purpose is, in almost every instance, the provision of additional money capital. That is accomplished in one or another of three ways: either the owners of the property make cash payments for a certain percentage of stock in addition to that paid for in property, or some others are taken into the scheme who are willing to make cash subscriptions; or after obtaining all the stock in exchange for their property they make a donation of shares to the corporation, which is sold in the market for cash as treasury stock, thus realizing cash for the uses of the corporation.

Though corporate stock subscriptions can be made payable in property,⁷ it must be taken at a reasonable money value; and although a margin will be allowed for honest differences of opinion as to such value, deliberate and intentional overvaluation is not permissible.⁸ When overvaluation is grossly excessive and intentionally made, though without actual fraud, it is invalid as to corporation creditors who may proceed against the stockholders individually as for unpaid stock subscriptions.⁹ Also the property must be such as the corporation can lawfully acquire and hold for carrying out the purposes for which it was organized.¹⁰ However, where stock is issued in payment for property at a valuation made

⁷ *Northwest Nat. Motor & Vehicle Co. v. McConnell*, 153 Minn. 398, 190 N. W. 608; *Hills v. Skagit Steel & Iron Works*, 122 Wash. 22, 210 Pac. 17.

⁸ *Rhode v. Dock-Hop Co.*, 184 Cal. 367, 194 Pac. 11; *Kaye v. Metz*, 186 Cal. 42, 198 Pac. 1047; *Mackie Pine Products Co. v. Fredericks*, 148 La. 687, 87 So. 712.

⁹ *Elyton Land Co. v. Birmingham, etc., Elevator Co.*, 92 Ala. 407, 9 So. 129, 25 A. S. R. 65, 12 L. R. A. 307; *Coleman v. Howe*, 154 Ill. 458, 39 N. E. 725, 45 A. S. R. 133; *Kaye v. Metz*, 186 Cal. 42, 198 Pac. 1047.

¹⁰ *Harn v. Smith*, 85 Okla. 137, 204 Pac. 642.

in good faith at the time of the transaction, such valuation is binding on the creditors of the corporation.¹¹

§ 206. Resolution Accepting Property for Stock.—The resolution accepting property in payment for stock, whether passed at a stockholders' meeting or at a directors' meeting, may be as follows:

Whereas, William Wilton offers in writing to sell, assign, and convey to this company the entire plant of the Economic Paper Company at Providence, R. I., as set forth in a statement and schedule attached to his said offer, in exchange for all the unsubscribed capital stock of this corporation, to wit, seven hundred shares, to be issued to him in exchange for said property as full paid; and, whereas, it appears that the said property is necessary for the purposes of this corporation, and is at least equal in value to said stock.

Therefore, Resolved that said offer be accepted, and, upon the execution and delivery of sufficient conveyances in fee simple of all the title and interest of the said Wilton in and to the real estate upon which said plant is situated, or which is used in connection therewith, as specified in said offer, statement and schedule, and delivery of all of the personal property specified to this corporation, the president and secretary are authorized to issue a certificate or certificates representing said seven hundred shares of stock to the said William Wilton, or to his order.

In the case of a corporation formed for the express purpose of taking over the property of another corporation, or of individuals, the resolution may be in the same form as the foregoing. Of course, even in that case conveyances of real estate must be made, and personal property delivered.

§ 207. Proposition by Owner to Take Stock of Corporation. Where a corporation has been formed to take over and develop existing property, the incorporators are, as a rule, for the most part, mere dummies. After the organization is complete, the owner of the property to be taken over makes a proposition to the corporation, which may be as follows:

To the Stockholders and Directors of the New Era Printing Company, Washington, D. C.

I hereby offer you in exchange and full payment for the entire capital stock of your company, including the shares subscribed for by the incorporators, the entire plant of the printing office heretofore conducted by the undersigned at 79 Printing House Square, in the city of Washington,

¹¹ Krebs. v. Oberrender, 274 Pa. 154, 118 Atl. 19.

District of Columbia, consisting of a full complement of metal type, power presses, hand presses, etc., all of which will more fully appear from the schedule attached hereto, all of which is in good condition and of the value of at least \$75,000.

If the above proposition be accepted, the entire capital stock of your company, excepting the shares subscribed for by the incorporators, is to be issued to my order full paid, conditionally upon the delivery to an agent of your company, duly authorized by you, of said plant, including all the articles named in said schedule, the same when so delivered to be in good serviceable condition. In the event of the acceptance of the above proposition, I agree either to assume the payment of the subscriptions already made to the capital stock and to have the certificates representing the same issued to persons to be named by me, or that the subscribers therefor shall make payment according to the terms of their several subscriptions and continue as stockholders.

In either event I also agree to turn over to the treasurer of your corporation of the shares issued to me, not less than one hundred shares of the par value of \$100 each. Such stock to be sold as treasury stock for the best price obtainable, with a view to providing working capital for the company.

This January 20, 1926.

Respectfully,

JOHN D. WARDLAW.

§ 208. Resolution of Acceptance by Stockholders of Proposition of Real Owner.—Probably the board of directors, in most of the states, would have authority to entertain such a proposition, and conduct the negotiations to a close. But it will sometimes expedite matters and avoid friction, disputes and complications to submit the whole matter to a meeting of stockholders, after which the directors can carry out their will. The stockholders might, if desirous of accepting the foregoing propositions, adopt a resolution as follows:

Whereas, A proposition from John D. Wardlaw, bearing date of January 20, 1926, has been received offering to exchange for the unsubscribed capital stock of this corporation, to be issued to him full paid, certain property in his offer and in the schedule annexed thereto set forth and described, and to donate 100 shares of the stock, to be issued to him as treasury stock; and whereas, it appears to the stockholders of this company that the said property is desirable for the purposes of this company, and it is reasonably worth the price placed upon it by the said Wardlaw, and that it will be to the interest of this company and all its stockholders to accept this proposition; therefore,

Resolved, That said proposition be and the same is hereby approved and accepted, and the board of directors of this corporation are hereby authorized and directed to take all necessary and proper steps to make the said exchange and issue of stock and to carry the same fully into effect.

§ 209. Resolution by Directors Accepting Proposition of Real Owner.—Action must then be taken by the board of directors, which may be by resolution as follows:

Be it resolved, pursuant to authorization and direction, by the stockholders of this corporation, the New Era Printing Company, in meeting assembled, on the 1st day of March, 1926, the property mentioned, described and scheduled by John D. Wardlaw, in and accompanying his offer of January 20, 1926, be, and the same is hereby accepted in full payment for all the unsubscribed shares of the capital stock of this corporation, and the president and secretary of this corporation are hereby authorized and directed to accept delivery of said property, and to issue in exchange therefor the entire unsubscribed stock of this corporation, as full paid stock, to the said John D. Wardlaw, or to such person or persons, as may be in writing designated by him.

Sometimes the person making a proposition of this general character prefers to obtain ownership or control of all the stock, including that already subscribed. In that case he will first have arranged with those who have already subscribed for a purchase of their subscriptions, conditioned upon the acceptance of his offer to exchange his property for the unsubscribed shares. In his offer he will then mention this conditional arrangement.

§ 210. Conditional Assignment by Stockholders to Real Owner.—The conditional assignment by the subscribers may be as follows:

We, the undersigned, being all the present subscribers to the capital stock of the New Era Printing Company, in consideration of the sum of one dollar to each of us in hand paid, receipt whereof is admitted, and in consideration of certain undertakings and agreements, do hereby sell and assign to John D. Wardlaw all our rights in said corporation arising from and incidental to our having subscribed for the shares of its capital stock, appearing opposite our respective names below.

This assignment is upon the condition that said corporation accept the proposition made to said corporation by the said Wardlaw on the 20th day of January, 1926, involving an exchange of property for the entire subscribed capital stock, and that this exchange be entirely consummated on both sides.

(Signatures of Stockholders.)

§ 211. Validity of the Issue.—Statutory limitations upon the power to issue stocks are designed primarily to protect the creditors of the corporation and secondarily to safeguard the interests

of the stockholders.¹² Thus, the validity of an issue or the adequacy of the consideration may in all cases be called in question by creditors of a corporation who may be affected thereby.¹³ In the case of stockholders, however, only those who failed to consent to an improper issue may be heard to complain, assenting stockholders not being permitted to take advantage of their own dereliction. Dissenting stockholders are entitled to relief where it is shown that there is an unreasonable discrepancy between the real value and the price allowed for the property or the services.¹⁴

§ 212. **Overissued Stock.**—That provision found in the statutes of most states that “all fictitious increase of stock is void”¹⁵ renders void all stock issued in excess of the authorized capital stock even in the hands of a *bona fide* holder.¹⁶ Such stock cannot legally exist, and a person acquiring it cannot by estoppel or otherwise become a stockholder.¹⁷

In several instances the question has arisen as to whether or not an overissue has actually taken place. Where shares have been surrendered and new shares issued in their stead, there is, plainly, no overissue by reason of such transaction. The new issue in such case merely takes the place of the shares surrendered.¹⁸ So an issue of stock for certificates which have been lost is not an over-

¹² Peoria, etc., R. Co. v. Thompson, 103 Ill. 187, 1 A. & E. R. C. 101; Memphis, etc., R. Co. v. Dow, 120 U. S. 287, 7 S. Ct. 482, 30 L. Ed. 595.

¹³ Wallace v. Carpenter Electric Heating Mfg. Co., 70 Minn. 321, 73 N. W. 189, 68 A. S. R. 530.

¹⁴ Smith v. Ferries, etc., R. Co., 5 Cal. U. 889, 51 Pac. 710, 723; Hill v. Atoka Coal, etc., Co., 124 Mo. 165, 25 S. W. 926, 32 S. W. 111; Rafferty v. Buffalo City Gas Co., 37 App. Div. 618, 56 N. Y. S. 288; Wetherbee v. Baker, 35 N. J. Eq. 501; Langan v. Francklyn, 29 Abb. N. Cas. (N. Y.) 102; Brown v. Duluth, etc., R. Co., 53 Fed. 889; Kimbell v. Chicago Hy. Pr. Br. Co., 119 Fed. 102, 55 C. C. A. 162.

¹⁵ See Cal. Const., Art. XII, § 11, Civil Code, § 359.

¹⁶ Scoville v. Thayer, 105 U. S. 143, 26 L. Ed. 968; Leffingwell v. Evans, 185 Ky. 351, 216 S. W. 58; Cattlemen's Trust Co. v. Swearingen (Tex. Civ. App.), 200 S. W. 596, citing 7 R. C. L. 218, sec. 189.

¹⁷ First Ave. Land Co. v. Parker, 111 Wis. 1, 86 N. W. 604, 87 A. S. R. 841.

¹⁸ Wells v. Thompson Mfg. Co., 54 Mo. App. 41.

issue.¹⁹ And so it has been held that where no more than the legal amount of stock has been actually issued, an overissue is not proved by the mere fact that the total stock subscribed, as entered in the articles of incorporation, exceeded the legal amount.²⁰ An overissue of stock does not, however, avoid the original issue.¹

§ 213. Remedies Where Stock Has Been Overissued.—The holder of overissued stock is wholly without any remedy by which he may acquire the rights of a stockholder through such stock; the stock is void from the beginning and no ratification, estoppel, or laches on the part of others can be pleaded as a reason for declaring it valid. But while an innocent holder of overissued stock acquires no rights and suffers no liabilities as a stockholder, he has, however, against the corporation an action for damages, the measure of which is, according to some authorities, the price which was paid for the stock,² and according to others, the market value at the time of the discovery of the overissue.³

In order that one may have a remedy against the corporation, however, the stock must have been properly issued in other respects; the certificate, for instance, must have been duly signed by the proper officers.⁴

If, after gaining knowledge of the facts one postpones his objection thereto an unreasonable length of time he is said to be guilty of laches, and to have tacitly acquiesced in the conditions, and he is barred from relief.⁵ Especially is this true where others have innocently acquired interests which would be imperiled by the

¹⁹ *Kinnan v. Forty-second St., etc., Ry. Co.*, 1 Misc. Rep. 457, 21 N. Y. Supp. 789.

²⁰ *Tulare Sav. Bank v. Talbot*, 131 Cal. 45, 63 Pac. 172.

¹ *Byers v. Rollins*, 13 Colo. 22, 21 Pac. 894.

² *Tome v. Parkersburg Br. R. Co.*, 39 Md. 36, 17 A. S. R. 540.

³ *Craft v. South Boston R. Co.*, 150 Mass. 207, 22 N. E. 920, 15 A. S. R. 185, 5 L. R. A. 641; *Havens v. Tarboro Bank*, 132 N. C. 214, 43 S. E. 639, 95 A. S. R. 627; *People's Bank v. Kurtz*, 99 Pa. St. 344, 44 A. S. R. 112; *Willis v. R. Co.*, 6 W. N. C. (Pa.) 461.

⁴ *Holbrook v. Fauquier, etc., T. Co.*, 3 Cranch (U. S.) 425.

⁵ *Calivada Col. Co. v. Hays*, 119 Fed. 202; *Kimbell v. Chicago Hydraulic Press Brick Co.*, 119 Fed. 102, 55 C. C. A. 162; *Higgins v. Lansingh*, 154 Ill. 301, 40 N. E. 362; *Foster v. Belcher's Sugar Ref. Co.*, 118 Mo. 238, 24 S. W. 63; *Jutte v. Hutchinson*, 189 Pa. St. 218, 42 Atl. 123.

success of his suit.⁶ The officers who personally caused the over-issue are individually liable for such damages and may be sued separately or jointly with the corporation.⁷

In order to remove the cloud upon the title of genuine stock, the owners of the latter or the corporation itself, may bring suit to have enjoined the further transfer of overissued stock,⁸ or may sue for its cancellation.⁹ Those, however, who invoke the law in such cases "must come into court with clean hands." They will not be permitted to take advantage of conditions for which they themselves are responsible, either as original actors in the invalid proceeding or as officers who have so long looked on without objection that a third party has been misled through what may be termed their connivance.¹⁰

A corporation which has for years treated as valid an unauthorized issue of preferred stock, and paid dividends upon it, cannot in a proceeding to cancel the stock compel an accounting for the dividends received to date.¹¹

§ 214. Stock Issued for Less Than Par.—Stock which has been disposed of by the corporation for less than its par value stands in much the same position as that which has been issued for property or services of less value than the par value of the stock. The rights of the creditors are the same in both cases. Dis-

⁶ *Commonwealth v. Reading Tr. Co.*, 204 Pa. St. 151, 53 Atl. 755; *American Wire-Nail Co. v. Bayless*, 91 Ky. 101, 15 S. W. 10; *Foushee v. Snyder* (Ky. 1900), 54 S. W. 731.

⁷ *Firbank v. Humphreys*, 18 Q. B. D. 54; *Shotwell v. Mali*, 38 Barb. (N. Y.) 445; *Cazeaux v. Mali*, 25 Barb. (N. Y.) 578; *Bruff v. Mali*, 36 N. Y. 200; *Seiser v. Mali*, 6 Abb. Pr. (N. Y.) 270; *National Exchange Bank v. Sibley*, 71 Ga. 726.

⁸ *Sherman v. Clark*, 4 Nev. 138, 97 A. D. 516; 7 M. M. R. 483; *Kent v. Quicksilver Min. Co.*, 78 N. Y. 159.

⁹ *N. Y., etc., R. Co. v. Schuyler*, 17 N. Y. 592; *Wood v. Union Gospel Ch. Bldg. Assoc.*, 63 Wis. 9, 22 N. W. 756; *Haskell v. Read*, 68 Neb. 107, 93 N. W. 998, 96 N. W. 1007.

¹⁰ *Kent v. Quicksilver Min. Co.*, 78 N. Y. 187; *Taylor v. South, etc., Ala. R. Co.*, 4 Woods (U. S.) 575; *Toledo, etc., R. Co. v. Continental Tr. Co.*, 95 Fed. 497, 36 C. C. A. 155; *Branch v. Jesup*, 106 U. S. 468, 1 S. Ct. 495, 27 L. Ed. 279, 9 A. & E. R. C. 558; *Evansville, etc., Str. Line R. Co. v. Evansville*, 15 Ind. 395.

¹¹ *Higgins v. Lansingh*, 154 Ill. 303, 40 N. E. 362.

senting stockholders may complain;¹² assenting stockholders may not.¹³

§ 215. **Remedies Where Stock Has Been Issued for Inadequate Consideration or for Less Than Par.**—In some states statutes permit an action by the state for the annulment of so-called watered stock for which no adequate consideration was paid when it was issued.¹⁴ In the absence of such statutes, however, the state may not interfere with what is purely a question between individuals.¹⁵ It is generally held, however, that stockholders who receive stock for property at an overvaluation are liable to creditors for the difference between the value of the property transferred and the par value of the stock.¹⁶ A dissenting stockholder may have enjoined the issuance of such stock,¹⁷ and that which has already been issued he may have reduced to its par value.¹⁸

While in some states, the court may order such stock called in and canceled on equitable terms,¹⁹ in others the corporation is left to enforce its right to sue for the unpaid balance.²⁰

¹² *Smith v. Ferris, etc., R. Co.*, 5 Cal. Unrep. 889, 51 Pac. 710; *Kimball v. N. E. Roller Grate Co.*, 69 N. H. 485, 45 Atl. 253; *Fisk v. Chicago, etc., R. Co.*, 36 How. Pr. (N. Y.) 22; *Kraft v. Griffon Co.*, 82 App. Div. 29, 81 N. Y. S. 438; *Vasey v. New Export Coal Co.*, 89 W. Va. 491, 109 S. E. 613.

¹³ *Higgins v. Lansingh*, 154 Ill. 301, 40 N. E. 362; *Insurance Press v. Montauk Fire Detect. Co.*, 83 App. Div. 259, 82 N. Y. S. 104; *Wells v. Green Bay, etc., C. Co.*, 90 Wis. 442, 64 N. W. 69; *Scoville v. Thayer*, 105 U. S. (15 Otto) 153, 26 L. Ed. 973; *Vasey v. New Export Coal Co.*, 89 W. Va. 491, 109 S. E. 613.

¹⁴ *Commonwealth v. Reading Tr. Co.*, 204 Pa. St. 151, 53 Atl. 755.

¹⁵ *State of Minnesota v. Guaranty Trust, etc., Co.*, 73 Fed. 914.

¹⁶ *Mills v. Brady*, 185 Cal. 317, 196 Pac. 776; *Joseph T. Ryerson & Son v. Peden*, 303 Ill. 171, 135 N. E. 423; *Butterworth v. Ross*, 238 Mass. 279, 130 N. E. 678; *Raleigh Inv. Co. v. Bunker*, 285 Mo. 440, 227 S. W. 121.

¹⁷ *Brown v. Duluth, etc., R. Co.*, 53 Fed. 889; *Donald v. American Smelting, etc., Co.*, 62 N. J. Eq. 729, 48 Atl. 771, 1116; *Kraft v. Griffon Co.*, 82 App. Div. 29, 81 N. Y. S. 438.

¹⁸ *Fosdick v. Sturges*, 1 Biss. (U. S.) 257.

¹⁹ *Kimball v. New England Roller-Grate Co.*, 69 N. H. 485, 45 Atl. 253; *Jutte v. Hutchinson*, 29 Pittsb. Leg. J. N. S (Pa.) 87; *Kimball v. Chicago Hy. Pr. Br. Co. (C. C. A.)*, 119 Fed. 102, 55 C. C. A. 162; *Brown v. Duluth, etc., R. Co.*, 53 Fed. 889.

²⁰ *Peatman v. Centerville Light, etc., Co.*, 110 Iowa 245; *Nash v. Hall*, 11 Misc. (N. Y.) 468.

Innocent purchasers of stock who have been deceived by the statement upon the certificates that the stock is "fully paid" may either sue the corporation for the deception practiced,¹ or, if they act promptly, rescind their subscriptions and recover the prices paid.² Such *bona fide* purchasers have also a right of action against the directors or other individuals who practiced the original deception upon them.³

§ 216. When Relief Is Barred.—Relief in all of the foregoing cases is granted on equitable grounds only. Therefore, if, as a result of one's own action or unreasonable delay, the rights of others have intervened or he may reasonably be said to have ratified the actions complained of, he has lost his remedy.⁴ As in the case of an overissue, participation in the original improper issue bars one's right⁵ and that of his assignees⁶ to institute legal proceedings. After apparent acquiescence for a number of years, the adequacy of the consideration may, as to persons who were thus in a position to complain but have refrained therefrom, be looked upon as conceded.⁷

¹ *Sturges v. Stetson*, 1 Biss. (U. S.) 246; *First Ave. Land Co. v. Parker*, 111 Wis. 1, 86 N. W. 604, 87 A. S. R. 841.

² *Fosdick v. Sturges*, 1 Biss. (U. S.) 255.

³ *Smith v. Martin*, 135 Cal. 247, 256, 67 Pac. 779.

⁴ *Calivada Colonization Co. v. Hays*, 119 Fed. 202; *Commonwealth v. Reading Traction Co.*, 204 Pa. St. 151, 53 Atl. 755.

⁵ *Greve v. Echo Oil Co.*, 8 Cal. App. 275, 96 Pac. 904; *Washburn v. Nat. Wall-Paper Co.*, 26 C. C. A. 312, 81 Fed. 17; *Smith v. Martin*, 135 Cal. 247, 67 Pac. 779; *Green v. Abietine Med. Co.*, 96 Cal. 322, 31 Pac. 100; *Drake v. N. Y. Sub. Water Co.*, 26 App. Div. 499, 50 N. Y. S. 826; *Way v. American Grease Co.*, 60 N. J. Eq. 263, 47 Atl. 44; *Handley v. Stutz*, 139 U. S. 417, 423, 426, 428, 11 S. Ct. 530, 35 L. Ed. 227; *Herhold v. Upton*, 91 U. S. 45, 23 L. Ed. 203.

⁶ *O'Dea v. Hollywood Cemetery Assoc.*, 154 Cal. 53, 97 Pac. 1.

⁷ *California Trona Co. v. Wilkinson*, 20 Cal. App. 694, 708, 130 Pac. 190, 193.

CHAPTER XIX.

COOPERATIVE ASSOCIATIONS.

- § 217. Formation and Purpose of.
- § 218. Powers of the Association.
- § 219. Articles of Association.
- § 220. Rights, Interests, and Liabilities of Members.
- § 221. Adoption of By-Laws.
- § 222. What By-Laws May Provide for.
- § 223. Purpose of the Association, How May Be Altered.
- § 224. Articles of Incorporation of a Cooperative Association. [Short Form.]
- § 225. Articles of Incorporation of a Non-Profit Cooperative Association.
- § 226. Articles of Incorporation of a Cooperative Association for Profit.
- § 227. Certificate of Incorporation.
- § 228. Consent and Waiver of Notice of First Meeting of Incorporators.
- § 229. Minutes of the Organization Meeting.
- § 230. Waiver of Notice of Meeting of Members for General Purposes.
- § 231. Code of By-Laws of a Cooperative Association.

§ 217. **Formation and Purpose of.**—In many states there are statutes providing that a certain number of persons may form a cooperative association for the transaction of any lawful business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social, or political purpose. Such association must not have any capital stock, but must issue membership certificates to each member. Such certificate cannot be assigned, so that the assignee can, by its transfer, become a member of the association, but, by a resolution of its board of directors, such certificate may be transferred and the transferee made a member in lieu of the last former holder.

§ 218. **Powers of the Association.**—It is generally provided that every association so formed has power of succession by its associate name for a certain number of years; in such name to sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey personal and real property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or mem-

bers, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange and to do all other things proper to be done for the purpose of carrying into effect the objects for which the Association is formed.

§ 219. Articles of Association.—An association so formed must prepare articles of association, in writing stating: Name of the association, the purpose for which it is formed, the place where its principal place of business is to be transacted, the term for which it is to exist, the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal.

§ 220. Rights, Interests, and Liabilities of Members.—In such association the rights and interests of all members are equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member must be entitled to cast one vote and no more. It is usually provided that all persons above a certain age, regardless of sex, are eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws must provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws.

§ 221. Adoption of By-Laws.—An association so formed must, within a certain number of days after it becomes an association, adopt a code of by-laws for the government and management of the association. A majority of all the associates is necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same, and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment, given as the by-laws may provide. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business is transacted.

§ 222. What By-Laws May Provide for.—Such association may, by its by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof are necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise, provided the method secures the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership must cease, and the mode and manner of expulsion of a member, subject to the right of an expelled member to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors may deem best, and to have the money, property, or labor so awarded him paid, or delivered, or performed within forty days after expulsion; the amount of membership fee, and the dues, installments, or labor which each member must be required to pay or perform, if any,

and the manner of collection or enforcement, and for forfeiting or selling of membership interest for non-payment or non-performance; the method, time, and manner of permitting the withdrawal of a member, if at all, and how his interest must be ascertained, either in money or property, and within what time the same must be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same must be paid to his legal representatives in money, or property, or labor, and within what time the same must be paid or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed.

§ 223. Purpose of the Association, How May Be Altered.—

The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two-thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-laws provide for the election of directors.

§ 224. Articles of Incorporation of a Cooperative Association. [Short Form.]

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, a majority of whom are citizens and residents of the state of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the state of California,

AND WE HEREBY CERTIFY:

I.

That the name of this corporation shall be:

OCEAN BEACH BOOSTER CLUB.

II.

The purposes for which this corporation is formed are as follows:

(1) To advocate the adoption of such measures as will add to the comfort of residents and the beautification and attractiveness of Ocean Beach, in the city of San Diego.

(2) To originate and secure the adoption of such measures as will attract visitors to San Diego and Ocean Beach and to promote their safety and convenience.

(3) To promote sociability and friendship among its members, to

manage and conduct entertainments, excursions and social meetings of its members.

(4) To render such benevolent aid and comfort to its members as may be provided by its By-Laws.

(5) To maintain a club house, park, garage and a bus or auto service for the use of members and their guests exclusively.

(6) For the purposes aforesaid to acquire by purchase or otherwise, lease, manage, control and in any and every way deal in and with real and personal property.

III.

The place where its principal business is to be transacted is Ocean Beach, California.

IV.

The term for which it is to exist is fifty (50) years.

V.

The number of directors of this corporation shall be five (5) and the names and residences of those selected for the first year and until their successors shall have been elected and shall have accepted office are as follows:

Name.	Residence.
W. E. Hardenburg.....	San Diego, California
G. O. Dillon.....	San Diego, California
Adolph Whitley	San Diego, California
H. H. Miner.....	San Diego, California
J. Y. Daniel	San Diego, California

VI.

The voting power and property rights of this corporation shall be equally vested in all members. Upon admission of new members as members in full standing, they shall be entitled to vote and to share in the property of the association, equally with the other members.

VII.

The business of this corporation shall not be carried on for profit, and there shall be no capital stock. There shall be issued to each member, however, a certificate of membership which shall be non-assignable and non-transferable.

IN WITNESS WHEREOF, The original incorporators above named have hereunto set their hands and seals this 15th day of October, 1926.

W. E. HARDENBURG, (Seal)
 G. O. DILLON, (Seal)
 ADOLPH WHITLEY, (Seal)
 H. H. MINER, (Seal)
 J. Y. DANIEL, (Seal)

State of California }
 County of San Diego } ss.

On this 15th day of October, in the year 1926, before me, Victor Merritt, a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared W. E. Hardenburg, G. O. Dillion, Adolph Whitley, H. H. Miner, and J. Y. Daniel, known to me to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

(Seal)

VICTOR MERRITT,
 Notary Public in and for
 the County of San Diego,
 State of California.

§ 225. Articles of Incorporation of a Non-Profit Cooperative Association.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, hereby associate ourselves into a body corporate under the laws of the state of '....., and do adopt the following articles of incorporation:

ARTICLE I.

Name.

The name of this association shall be the

ARTICLE II.

Place of Business.

The principal place of business shall be at in the county of and state of

ARTICLE III.

Object.

The object of this corporation shall be to

The corporation shall also have the right to buy, hold, sell and convey personal property and such real estate as may be necessary or convenient for the proper conduct of the affairs of the corporation.

ARTICLE IV.

Membership.

Under the terms and conditions prescribed by its by-laws, this association may admit as members persons engaged in the production of products, or in the use or consumption of the supplies, to be handled by or through this association, including the lessors and landlords of lands used for the production of such products, who receive as rent part of the crop raised on the leased premises. The membership fee in this association shall be dollars per year, payable at such time and place as may be prescribed by the by-laws or by resolution of the board of directors.

Each member whose fees are fully paid, and who is in good standing shall be entitled to one vote at any regular or special meeting of the members of the association. Such votes shall be cast in person, provided, however, that votes may be cast by mail when a copy of the question, motion or resolution is attached to such vote. Voting by proxy shall be prohibited.

ARTICLE V.

Expiration.

The corporate life of this association shall begin on the date of the issuance of its certificate of incorporation by the Secretary of State of the state of, and shall terminate at the expiration of twenty-five (25) years from said date, unless sooner dissolved by a majority vote of all members of the association at any annual meeting or at a special meeting called for that purpose.

ARTICLE VI.

Directors and Officers.

The affairs of this association shall be managed by a board of directors to be elected by and from the members of the association. They shall hold office for a period of one year or until their successors are elected and have qualified.

The directors shall at their first meeting, following the annual meeting of the members hereinafter provided, elect from their own number a president, vice-president, secretary and treasurer, and such other officers as may be provided by these articles or the by-laws of this association.

The first meeting of the board of directors shall be held in the office of the association at, in the county of, state of, on the day of, A. D., 19...., and annually thereafter at said time and place immediately following the annual election of the association.

Special meetings of the board of directors may be held at such time and place as may be determined by the president, who shall give notice thereof in writing to each director by mail addressed to him at his postal address, as it appears in the records of the association, at least days prior to such meeting.

ARTICLE VII.

Election of Officers and Directors.

The annual election shall be held on the day of of each year.

Until the first election which shall be held on the day of, 19...., the following persons shall be directors:

Name.	P. O. Address.
.....
.....
.....

and the following persons shall be officers:

Name.	P. O. Address.
President,
Vice President,
Secretary,
Treasurer,

ARTICLE VIII.

The board of directors shall fill vacancies occurring in its membership between elections by appointment of qualified members to hold office for the remainder of the term.

Special meetings of the members may be called by the president at any time upon giving days' notice in person or in writing to the members of the time and place thereof, and shall be called by him at any time upon the written request of a majority of the directors or of any members, and in case of his refusal or neglect to call such meeting, such directors or members may join in a call of the members, which meeting shall be the same as though called by the president.

ARTICLE IX.

Indebtedness.

This association shall have power to borrow money from time to time, on a vote of a majority of all the directors at any regular or special meeting, and the property, real and personal, of the association may be mortgaged to secure such sums borrowed, provided that the association shall at no time, have, or subject itself to, an indebtedness exceeding dollars (\$.....).

ARTICLE X.

Limitation of Liability.

The liability of the members for the debts of this association shall be limited to the amount of their membership fees.

ARTICLE XI.

Distribution of Surplus.

This association shall perform services for its members on a basis of the lowest practicable cost, and may provide for meeting the cost thereof, through dues, assessments, or service charges, which shall be prescribed in the by-laws. Such charges shall be set high enough to provide a margin of safety above current operating costs and fixed charges upon borrowed capital. Out of any surplus remaining in any given year, the directors shall each year, set aside (must be not less than 10%) per cent (.....%) of such savings for the accumulation of a reserve fund until such reserve fund shall equal at least (not less than 40%) per cent (.....%) of the invested capital of the association, also (to be not less than 1% nor more than 5%) per cent (.....%) for a permanent educational fund from which expenditures shall be made annually at the discretion of the directors for the purpose of teaching co-operation, and the remainder to be returned to the members as a patron.

age dividend prorated on a uniform basis to each member upon the value of business done by him through the association.

ARTICLE XII.

By-Laws.

The corporation may make and alter by-laws at pleasure and may authorize the board of directors so to do, subject to such restrictions as may be deemed advisable.

ARTICLE XIII.

Amendments.

Amendments to these articles may be made at any annual meeting of the members, or at any special meeting called for that purpose, majority of all members voting for such amendments.

Dated this day of, 19....

INCORPORATORS.

Name.	Residence.
.....
.....
.....
State of.....	} ss.
County of	

On this day of, 19...., before me, a Notary Public in and for said county and state, personally appeared, said persons being to me personally known to be the identical persons whose names are subscribed to the foregoing articles of incorporation, and each for himself acknowledged the same to be his free and voluntary act and deed for the uses and purposes herein expressed.

WITNESS my hand and notarial seal the day and year last above written.

(Seal.)

.....
Notary Public in and for
said county and state.

§ 226. Articles of Incorporation of a Cooperative Association for Profit.

We, whose names are hereto subscribed, hereby associate ourselves into a body corporate under the laws of the state of, and do hereby adopt the following articles of incorporation:

ARTICLE I.

Name.

The name of this corporation shall be

ARTICLE II.

Place of Business.

The principal place of business of this corporation shall be at in the, county of, and state of

ARTICLE III.

Objects.

The objects of this corporation shall be to

The corporation shall have the right to buy, hold, sell and convey personal property and such real estate as may be necessary or convenient for the proper conduct of the affairs of the corporation.

All conveyances of real property made by the corporation shall be executed by the president and countersigned by the secretary with an impression of the corporate seal attached, if the corporation has a seal; and all releases of mortgages, liens, judgments or other claims that are required by law to be made of record may be executed by the president, vice-president or secretary of the corporation.

ARTICLE IV.

Purchase of Other Business.

This association shall have the power to purchase the business of any other association, person or persons and may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at fair market value as determined by the Executive Council, would equal the fair market value of the business so purchased as determined by the Executive Council as in cases of other corporations. Should the cash value of such purchased business exceed one thousand dollars (\$1000.00), then the directors of this association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest and to pay the proceeds thereof as currently received to the former owner of said business. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of this association may allow subscribers to vote as stockholders; provided, part of the stock subscribed for has been paid in cash.

ARTICLE V.

Capital Stock.

The authorized capital stock of this corporation is dollars (\$.....), divided into shares of the par value of dollars (\$.....) each. No stock shall be issued until the corporation has received payment in full therefor at par in cash or property; provided, however, that when stock is to be issued for anything other than money, it must be subject to the approval of the executive council of, as by law provided.

The capital stock authorized may be increased by a majority vote of its stockholders at any regular stockholders' meeting or at any special stockholders' meeting called for that purpose, by the adoption of an amendment to these articles. No stockholder in this association shall own shares of a greater aggregate par value than dollars (\$.....).

ARTICLE VI.

Investment of Reserve Fund.

At any regular meeting, or any regularly called special meeting, at which at least a majority of all its stockholders shall be present, or represented, this association may by a majority vote of its stockholders present or represented, subscribe for shares or invest its reserve fund, not to exceed twenty-five per cent (25%) of its capital, in the capital stock of any other cooperative association.

ARTICLE VII.

Duration.

The corporation period of this corporation shall begin on the date the Secretary of State issues a certificate of incorporation and shall terminate at the expiration of twenty (20) years from said date, with the right of renewal as provided by law, unless sooner dissolved by a vote of the stockholders at any annual meeting, or at a special meeting called for that purpose, or by unanimous consent as provided by law.

ARTICLE VIII.

Management.

The affairs of this corporation shall be managed by a board of directors who shall be elected by and from the stockholders. The directors shall annually, from their own number, elect a president, a vice-president, a secretary and treasurer.

ARTICLE IX.

Election of Directors and Officers.

The annual election of directors by the stockholders shall be held at the principal place of business on the day of of each year. The annual election of officers by the directors shall be held immediately following the adjournment of the stockholders' meeting.

Until the first election, which shall be held on, 19...., the following persons shall be directors:

Name.	Postoffice Address.
.....
.....
.....

and the following shall be officers:

Name.	Postoffice Address
President,
Vice President,
Secretary,
Treasurer,
.....

All officers of this corporation shall hold office for the term of one year or until their successors are elected and have qualified. Every direc-

tor shall be a stockholder and if any director shall sell or transfer his stock in this corporation, he shall at once cease to be a director. The board of directors may fill all vacancies occurring in its membership between annual elections by the appointment of qualified persons to hold office for the remainder of the term, except that a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy thus created. Special meetings of the stockholders may be called at any time by the president giving ten (10) days' notice in person or in writing to the stockholders, and shall be called by him at any time upon request of stockholders and in case of his neglect or refusal to call a meeting stockholders may join in a call of the stockholders, which meeting shall be the same as though called by the president. At all meetings of the stockholders each stockholder shall be entitled to one vote. Such votes shall be cast in person, provided, however, that votes may be cast by mail when a copy of the question, motion or resolution is attached to such votes.

ARTICLE X.

Apportionment of Earnings.

The earnings of this association shall be apportioned in the manner provided by law.

The distribution of profits shall be at such times as the by-laws shall prescribe, which shall be as often as once in twelve months.

ARTICLE XI.

Indebtedness.

The highest amount of indebtedness to which this corporation may at any time subject itself shall not exceed two-thirds of its paid-up and outstanding capital stock, except as provided by law.

ARTICLE XII.

Limitation of Liability.

The private property of the stockholders shall be exempt from corporate liability except to the extent and in the manner provided by the laws of the state of

This article shall not be changed, except by unanimous consent of all stockholders in interest.

ARTICLE XIII.

Use of Funds.

None of the funds of this association shall be used in payment of any promotion; as commissions, salaries or expenses of any kind, character or nature whatsoever.

ARTICLE XIV.

By-Laws.

The corporation may make and alter by-laws at pleasure, and may authorize the board of directors to do so, subject to such restrictions as may be deemed advisable.

ARTICLE XV.

Amendments.

This corporation may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days' notice to all stockholders.

INCORPORATORS.

Name.	Residence.
.....
.....
.....

State of }
County of } ss.

BE IT REMEMBERED, That on this day of, 19...., before me, a notary public in and for said county and state, personally appeared; said persons being to me personally known to be the identical persons whose names are subscribed to the foregoing articles of incorporation, and each for himself acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal at in the county of, state of, the day and year last above written.

.....
(Seal.) Notary Public in and for
the county and state.

§ 227. Certificate of Incorporation.

No.....

STATE OF CALIFORNIA.
DEPARTMENT OF STATE.

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that the Articles of Incorporation of

OCEAN BEACH BOOSTER CLUB

containing the required Statement of Facts, to wit, the name of the corporation or association; the purpose for which it is formed; the place where its principal business will be transacted; the term for which it is to exist; the number of directors thereof; the names and residences of

those selected for the first year, and until their successors shall have been elected and shall have accepted office, were this day filed in this office.

And I further certify that said Articles contained the required statement determining and fixing the voting powers and the property rights and interests of the members of the corporation or association.

In WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of California, this 15th day of October, 1926.

(Seal.)

FRANK C. JORDAN,

Secretary of State.

By,

Deputy.

§ 228. Consent and Waiver of Notice of First Meeting of Incorporators.

We, the undersigned, being all the incorporators of Ocean Beach Booster Club, organized under the laws of the State of California, do hereby waive notice of the time, place and purpose of the first meeting of said incorporated association, do fix the 14th day of October, 1926 at 10:00 o'clock in the forenoon, as the time, and the principal office of said association at 306 Scripps Building, San Diego, California, as the place of said meeting. And we do hereby waive all the requirements of the statutes of California, both as to the notice of this meeting and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated October 1st, 1926.

(Signatures.)

§ 229. Minutes of the Organization Meeting.

The persons named as incorporators in the Articles of Incorporation of Ocean Beach Booster Club, and as directors for the first year thereof, to wit,

W. E. Hardenburg,

H. H. Miner,

G. O. Dillon,

J. Y. Daniel,

Adolph Whitley,

met at 4908 Ocean Boulevard, Ocean Beach, California, on the day of, A. D. 1926, at o'clockm. pursuant to the foregoing consent.

Mr. Hardenburg was chosen Chairman of the meeting and Mr. G. O. Dillon, who was also present at the meeting, Secretary.

The election of officers was thereupon declared to be in order; the following were named and duly elected:

W. E. Hardenburg, President.

Adolph Whitley, Vice-President.

G. O. Dillon, Secretary.

The Secretary then announced that the Certificate of Incorporation had been issued by the Secretary of State and upon motion, duly seconded, it

was unanimously resolved that a copy of the Articles of Incorporation, and a copy of said Certificate of Incorporation be spread upon the minutes.

(Insert copy of Articles and Certificate of Incorporation.)

A draft of a code of by-laws which had been previously prepared was then submitted to the meeting by the chair, and after being considered article by article, section by section, and as a whole, was adopted (or was amended and adopted), as the by-laws of the association, and ordered to be spread upon the minutes, and entered in a book of by-laws, to be procured and used by the Secretary for that purpose. Said by-laws are as follows:

(Here insert them at length.)

There being no further business before the meeting the meeting adjourned.

Secretary.¹

§ 230. Waiver of Notice of Meeting of Members for General Purposes.

The undersigned being all of the members of Association, a corporation created and organized under the laws of the State of, by virtue of a charter issued by the Secretary of State of said State bearing date on the day of, hereby assent and agree that a meeting of the members of said association shall be held at on the day of, at o'clock in the noon for the purposes of (here state the purpose), and the transaction of other business. We do hereby waive notice and the publication of notice of such meeting, and agree that any business transacted at such meeting shall be as valid and effective as though held after notice duly given and published.

Dated this day of, 1926.

(Signatures.)

§ 231. Code of By-Laws of a Cooperative Association.

ARTICLE I.—Name.

The name of the association shall be the

ARTICLE II.—Corporate Powers.

The corporate powers of this association shall be vested in a board of seven directors, who shall be members in good standing, holding membership certificates in the association, and four directors shall constitute a quorum for the transaction of business.

ARTICLE III.—Objects.

The objects of this association are the economical, intellectual and moral elevation of the working classes in general by cooperative enter-

¹ For a model set of minutes, see section 105, chapter XIV.

prises, and to further the interests of organized labor especially, and such other objects as are stated in the articles of incorporation of this association.

ARTICLE IV.—Membership.

Any person is eligible to membership in this association who is a member in good standing of a trades union at the time of his application, or who is known to uphold the interests of the working class and who, upon written application, has received three-fourths of the votes of members present at a regular or special meeting of the association.

ARTICLE V.—Election of Directors.

The directors shall be elected by ballot, at the quarterly meetings of the association, to be held on the day of July of each year, to serve for a year and until their successors are elected. Their term of office shall begin immediately after election.

ARTICLE VI.—Vacancies.

Vacancies in the board of directors shall be filled by the other directors in office; and such persons shall hold office until the first meeting of the association thereafter. Any director may be removed from office by a two-thirds vote of the members present at any quarterly meeting or special meeting called for that purpose.

ARTICLE VII.—Powers of Directors.

The directors shall have power:

1. To call special meetings of the association when they deem it necessary. And they shall call a meeting at any time upon the written request of one-third of the members.
2. To appoint and remove at pleasure, by or with the consent or upon the recommendation of the manager, all officers, agents and employees of the association, other than the manager, prescribe their duties, fix their compensation, and require from them security for faithful service.
3. To conduct, manage and control the affairs and business of the corporation, and to make rules and regulations, not inconsistent with the laws of the state of or the by-laws of the corporation, for the guidance of officers and management of the affairs of the association.
4. To incur indebtedness. The terms and amount of such indebtedness shall be entered on the minutes of the board, and the note or obligation, if any, given for the same, signed officially by the manager and secretary, shall be binding on the association.

ARTICLE VIII.—Duties of Directors.

It shall be the duty of the Directors:

1. To cause to be kept a complete record and minutes of all their acts and proceedings and of the proceedings of the association, and present a full statement at the regular quarterly meeting of the association, showing in detail the assets and liabilities of the association, and generally the condition of its affairs. A similar statement shall be presented at any other

meeting of the association when thereto requested by one-half of the members of the association.

2. To recommend to the association that dividends be declared out of the surplus profits when such profits shall, in the opinion of the directors, warrant the same.

3. To supervise all officers, agents and employees, and see that their duties are properly performed; to cause to be issued to the members certificates of membership.

ARTICLE IX.—Officers.

The officers shall consist of a president, secretary, treasurer and manager. The president shall be elected at the opening of each meeting of the board of directors, and shall hold office until the opening of the succeeding meeting of the board of directors, and no longer, unless re-elected. The secretary and treasurer shall be elected and hold office at the pleasure of the board of directors. The manager shall be elected by the association at its regular quarterly meetings to be held on the second Saturdays of January and July of each year. The board of directors may, in their discretion, elect or appoint such officers as in their judgment may be deemed necessary, which said officers shall hold office during the pleasure of said board.

ARTICLE X.—President.

The board of directors shall, at their regular meeting, elect one of their number to act as president, and if at any time the president shall be unable to act the manager shall take his place and perform his duties; the president or officer acting as such as above provided:

1. Shall preside over all meetings of the association and directors and shall have the casting vote.

2. He shall sign, as president, all certificates of membership; also all contracts and other instruments of writing which shall have first been approved by the board of directors, and shall draw checks upon the treasurer when thereto directed by the board of directors.

3. He shall call the directors together whenever he deems it necessary, and shall have, subject to the advice of the directors, direction of the affairs of the association, other than those entrusted to the manager, and generally shall discharge such other duties as may be required of him by the board of directors.

ARTICLE XI.—Secretary.

The board of directors shall elect a secretary.

1. It shall be the duty of the secretary to keep a record of the proceedings of the board of directors and of the association.

2. He shall keep the corporate seal of the association and the book of blank certificates of membership, fill and countersign all certificates issued, and make the corresponding entries in the margin of such book on such issuance; and he shall affix said corporate seal to all papers requiring a seal.

3. He shall keep a proper membership book, showing the date and number of each certificate of membership and to whom issued, and the facts and date of forfeiture, cancellation, or other final disposition of such certificate.

4. He shall keep proper account books, countersign all checks drawn upon the treasurer, and discharge such other duties as pertain to his office and as are prescribed by the board of directors.

5. He shall serve, or cause to be served, all notices required to be served by law or the by-laws of the association; and in case of his absence, inability, refusal or neglect so to do, then such notices may be served by any member directed by the president.

ARTICLE XII.—Treasurer.

1. The treasurer shall receive and account for all the funds of the association, and, so far as practicable, shall deposit the same in some bank designated by the board of directors as a depository, and pay them out, or cause them to be paid from the depository, only on the check of the president, countersigned by the secretary.

2. At each quarterly meeting of the association he shall submit, for the information of the members, a complete statement of his accounts for the past quarter. He shall discharge such other duties pertaining to his office as shall be prescribed by the board of directors, and shall give a good and sufficient bond in such amount as may be fixed by the board of directors.

ARTICLE XIII.—Manager.

The manager shall hold office for the period of six months after his election, and until the election and qualification of his successor. He shall not be removed from office except by the association, at a regular meeting, or special meeting called for that purpose, or for the purpose of considering any appeal by him from any order of suspension made by the board of directors. The board of directors may, for good and sufficient cause, suspend the manager from office. Upon such suspension the board of directors, or some person designated by them, shall perform the duties of manager until such suspension is removed or a new manager elected. The manager may appeal to the association from such order of suspension and such appeal shall be heard and determined by the association at its next regular or special meeting, and witnesses may be called and evidence submitted upon the merits of the suspension. Upon such hearing the association may affirm such suspension and remove the manager from office and elect his successor or may reverse such suspension and restore him to his office.

It shall be the duty of the manager:

1. To control and direct all labor, and the transaction and operation of the business generally, including the purchase of necessary material and supplies. The manager may or may not be a member of the board of directors.

2. To make requisitions upon the board of directors for necessary funds, stating in general the objects for which the funds are required, and

upon such requisition the board of directors shall order such funds paid to him by the treasurer in the usual manner, the amount thereof, however, not to exceed at any time one-half of the amount of the bond to be given by the manager. The manager shall give a good and sufficient bond, approved by the board of directors, for the faithful performance of his duties in such amount as the board of directors shall determine.

3. As far as practicable to make monthly returns to the board of directors of all expenditures, with necessary vouchers and a general statement of the condition of the business and affairs under his supervision.

ARTICLE XIV.—Books and Papers.

The books and such papers as may be placed on file by vote of the association or directors, shall at all times in business hours, in the presence of a majority of the board of directors, and not otherwise, be subject to the inspection of any member of the association.

ARTICLE XV.—Certificate of Membership.

Certificates of membership shall be of such form and device as the board of directors may elect, and each certificate shall be signed by the president and countersigned by the secretary, and express on its face its number, date of issuance, and the person to whom it is issued, and shall bear the corporate seal of the association.

The certificate book shall contain a margin, on which shall be entered the number, date, and the name of the person expressed in the corresponding certificate.

ARTICLE XVI.—Meetings.

1. The association shall meet quarterly, in regular session, and such meetings shall be held in the City of, County of, on the second Saturdays of the months of July, October, January, and April of each year, and shall be called by a printed notice signed by the president and secretary and served in the manner hereinafter directed for the service of notices, to each and all of the members of the association. Such service shall be made at least seven days prior to the day set for the meeting of the association, and shall specifically state the hour and place of meeting.

2. No meeting of the association shall be competent to transact business unless one-fourth of all the members of the association are present; but a less number may adjourn from day to day or until such time as may be deemed proper. One-fourth of all the members of the association shall constitute a quorum for the transaction of business, except where otherwise provided by law or these by-laws.

3. The board of directors shall meet in regular session on the second and fourth Saturdays of each month, at 7 o'clock p. m., at such place as may be designated or selected by the board of directors, as the regular meeting place of said board, and notice of such meeting is hereby dispensed with.

4. The president, or three of the directors, may call, or cause to be

called, special meetings of the directors at any time, and notice shall be given of such called meeting by leaving a written or printed notice at, or by mailing the same to, the last known place of business or of residence of each director, at least two days before the holding of said meeting; provided, however, that whenever all of the directors are present at any meeting, however called, or consent in writing that such meeting be held, the proceedings thereat shall be as valid as though previous written notice aforesaid had been given.

5. Special meetings of the association may be called by the president whenever he may deem it expedient, and he shall call such meetings when requested to do so in writing, by at least one-third of the membership of the association. Notice of special meetings of the association shall be given by the president, or, at his request, by the secretary, or personal service (as provided in the following paragraph) of such notice, at least seven days before the day of meeting, upon each of the members.

6. Service of notice upon any director or member may be effected by depositing a written or printed copy of such notice in the United States postoffice of the City of, in the State of, under cover and sealed, postage prepaid, addressed to each of such members or directors, the length of time prior to the day of meeting thereby called as required by these by-laws, and the certificate of the president or of the secretary giving such notice shall be conclusive as to the fact of service.

7. No person shall be competent to sit or act in any meeting of the association or to be a member of the board of directors, who has not paid his membership fee and received his certificate of membership, or who shall be in default for nonpayment of any call made upon him as hereinafter stated.

ARTICLE XVII.—Manner of Election and Voting.

At all meetings of the association, each member, qualified as stated in the last article, shall be entitled to vote upon all propositions coming before said association, provided that no voting by proxy shall be permitted, and no member shall be entitled to vote without being actually present at such meeting at the time of voting.

The ballot or votes at elections of directors or other officers shall have written or printed thereon the names of the persons selected by the voter. All such elections shall be by secret ballot. Tellers shall be appointed by the president or presiding officer of the meeting, who, on a count of the ballots, shall declare the person receiving the highest number of votes to be elected as such director or other officer, and such declaration shall be entered upon the minutes of the meeting. No cumulative voting shall be permitted, and each member of the association shall have but one vote for each director or officer to be elected.

ARTICLE XVIII.—Seal.

The association shall have a common seal, consisting of a circle having on its circumference and face the words, "....., incorporated July 12, 1926."

ARTICLE XIX.—Amendments.

The by-laws may be repealed or amended, or new by-laws may be adopted at any regular meeting of the association or at any other meeting called for that purpose, by a vote of not less than two-thirds of the members of the association.

ARTICLE XX.—Membership Fee.

The membership fee is and shall be \$6.00, and shall accompany the written application for membership. For the purpose of paying expenses, conducting business, and paying debts, and not otherwise, the association may, at any quarterly meeting, or at any special meeting called for that purpose, call upon each member for said amount, not exceeding \$5.00 in any month, as will be necessary to meet the then present exigency, and no more; provided, that all such calls shall not exceed, in the aggregate, the sum of \$45.00 in addition to the membership fee; and provided, further, that any member may, with the consent of the board of directors, apply the full amount of \$45.00 in addition to the membership fee, into the association and shall thenceforth be exempt from all such calls; and, in such case, the board of directors may allow to such member interest or profit on said money in such amount as they may consider just or the condition of the business will permit. No such call shall be made or levied at any meeting, regular or special, unless a majority of all the members of the association are present.

ARTICLE XXI.—Enforcement of Calls.

When any call shall be made as provided in the last article, notice thereof shall forthwith be given to each member in the same manner as provided for the service of other notices, and such notice shall designate a time not less than ten days from the date of service of said notice, when such call shall become delinquent; and, if payment of such call be not made before the expiration of said time, said call shall thereupon become delinquent, and said member shall be in default for nonpayment thereof. In case default shall be made in the payment of any such call, notice of such default or delinquency shall be given, which notice shall be served in the usual manner, requiring the payment of the amount of such call within five days from the date of service of said notice, and said notice shall specify the last day on which such payment can be made, and shall further state, that unless payment be made before the expiration of such last day, the membership of such delinquent member shall be forfeited without any further action of the association or board of directors, and that his membership certificate shall thereupon be canceled upon the books of the association; and, if such payment be not so made, said membership shall stand forfeited and certificate canceled; provided, however, that any member whose membership has been forfeited and membership canceled as aforesaid, may, within six months from the date of such forfeiture, pay to the association the amount of such call, and all intermediate calls that may be made, together with ten per cent of the amount of all such calls in addition thereof, and upon such payment he shall be

restored to all his rights as a member of this association. If such payments be not made within said time, said member shall thenceforth have no further interest in or connection with said association. During said period of six months, said member shall have no rights or voice in any of the affairs of the association.

ARTICLE XXII.—Expulsion.

If the conduct of any member has been injurious to the association, the board of directors, after citing said member, with seven days' notice of hearing, have full power to expel said member, and he shall be and is expelled after being so declared, but said member shall have the right to refuse to draw out his interest, and may appeal to the association, at its first regular meeting thereafter, from the action of said board of directors, and ask that he be reinstated. If the association, by a majority vote of those present, disapprove of the action of the board, he shall be reinstated. If expelled, and not reinstated as prescribed, his interest in said association shall be appraised by the board of directors, and shall be awarded paid, or delivered to him within forty days after such expulsion, or determination of his appeal.

ARTICLE XXIII.—Death and Resignation.

The directors shall determine upon the mode and manner of the settlement of a deceased member's account and the appraisement and time of payment in such cases. The board may also provide for the mode and manner of succession of membership and transfer of membership certificates, provided that no transfer of membership certificates shall be binding upon the association unless the person to whom such membership certificate was transferred shall make application for membership in the association in the usual manner and be balloted for and elected in the same manner as upon the election of new members.

ARTICLE XXIV.—Profits.

A possible overplus in the business shall be used, one-half for the extension of the business, one-fourth for the moral, physical, and intellectual elevation and welfare of trades unions and labor in general, and one-fourth for the general welfare of the members of the association. The association may, at any regular meeting, upon the recommendation of the board of directors, declare a dividend and direct that such profits be paid or used in the proportions above stated. Except as to that portion of the profits to be paid to the members of the association, the board of directors shall have the power to designate in what manner and for the benefit of what association or persons, such profits shall be used.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, being all of the members of the hereby assent to the foregoing by-laws, and adopt the same as the by-laws of said association.

In Witness Whereof, we have hereunto subscribed our names, this day of May,

.....

Members.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, directors and members of the association known as the ".....," do hereby certify that the above and foregoing by-laws were duly adopted as the by-laws of said association on the 15th day of May, 1926, and that the same do now constitute the by-laws of said association.

.....

Attest:, Secretary.
 (Corporate Seal.)

CHAPTER XX.

JOINT STOCK COMPANIES.

- § 232. Joint Stock Companies—In General.
- § 233. Distinction Between Joint Stock Companies and Corporations.
- § 234. Distinction Between Joint Stock Companies and Partnerships.
- § 235. Powers of Directors or Trustees.
- § 236. Associates May Be Sued by Name of Association.
- § 237. Dissolution of Joint Stock Companies.
- § 238. Articles of Agreement of a Joint Stock Company.
- § 239. Articles of Agreement of a Joint Stock Company. [Another Form.]

§ 232. **Joint Stock Companies—In General.**—A joint stock company has been defined to be an association of individuals for the purpose of profit, possessing a common capital contributed by members composing it, such capital being commonly divided into shares, of which each member possesses one or more, and which are transferable by the owner, the business of the association being under the control of certain selected individuals called directors.¹ One of the most important kinds of businesses for the conduct of which joint stock companies are organized is that of express companies.² Such companies have also been organized to deal in real estate,³ and have been formed for the purpose of yachting, hunting and fishing,⁴ and for carrying on a newspaper enterprise.⁵ A joint stock company is not a citizen within the meaning of the statutes regulating the jurisdiction of federal courts.⁶ Though a joint stock company is an artificial juridical person capable of acquiring, holding and selling property, and deeds and other instruments of conveyance may be made in the

¹ *Doyle-Kidd Dry Goods Co. v. Kennedy & Co.*, 154 Ark. 573, 243 S. W. 66, quoting 20 R. C. L. 1074, sec. 321. See, also, *Allen v. Long*, 80 Tex. 261, 266, 16 S. W. 43, 26 A. S. R. 735; *Willis v. Chapman*, 68 Vt. 459, 465, 35 Atl. 459; *Spraker v. Platt*, 158 App. Div. 377, 143 N. Y. S. 440.

² *State v. United States Express Co.*, 81 Minn. 87, 83 N. W. 465, 83 A. S. R. 366, 50 L. R. A. 667.

³ *Spotswood v. Morris*, 12 Idaho, 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665.

⁴ *Lyon v. Denison*, 80 Mich. 371, 45 N. W. 358, 8 L. R. A. 358.

⁵ *Holt v. Blake*, 47 Me. 62.

⁶ *Great Southern Fireproof Hotel Co. v. Jones*, 177 U. S. 449, 20 S. Ct. 690, 44 L. Ed. 482.

name of the president,⁷ it is not a legal entity.⁸ While it is hardly necessary it is safe to say in states having blue sky laws that joint stock companies are within the operation of such laws forbidding the sale of securities without approval from the commissioner of corporations.⁹

§ 233. Distinction Between Joint Stock Companies and Corporations.—While it is true that many companies called joint stock companies have many of the essential characteristics of a corporation, yet there is a distinction between such companies and regularly organized corporations so called. In respect to their formation there is a broad distinction between a corporation, technically so called, which always owes its existence to the sovereign power of the state, and a joint stock company which is brought into being by the contract of its members *inter sese*.¹⁰

Another distinguishing feature is that the creation of a corporation merges the individual rights and liabilities of the members into the corporation, while the organization of a joint stock company leaves the individual rights and liabilities of its members unimpaired and in full force, and the creation of a corporation destroys the common-law liability of the individual members for its debts, except so far as there may be a specific retention from the destruction which would otherwise follow.¹¹

Though a joint stock company has the general characteristics of a corporation, although not recognized as a corporation in the

⁷ *Oliver's Estate*, 136 Pa. 43, 20 Atl. 527, 20 A. S. R. 894, 9 L. R. A. 421; *People v. Wemple*, 117 N. Y. 136, 22 N. E. 1046, 6 L. R. A. 303.

⁸ *State v. United States Express Co.*, 81 Minn. 87, 83 N. W. 465, 83 A. S. R. 366, 50 L. R. A. 667.

⁹ *King v. Commonwealth*, 197 Ky. 128, 246 S. W. 162, 27 A. L. R. 1159; *Schmidt v. Stortz*, 208 Mo. App. 439, 236 S. W. 694; *People v. Clum*, 213 Mich. 651, 182 N. W. 136; *In re Girard*, 186 Cal. 718, 200 Pac. 593; *Matteson v. Weaver*, 229 Mich. 495, 201 N. W. 473; *Wagner v. Kelso*, 195 Iowa, 959, 193 N. W. 1; *State v. Cosgrove*, 36 Ida. 278, 210 Pac. 393; *Home Lumber Co. v. Hopkins*, 107 Kan. 153, 190 Pac. 601, 10 A. L. R. 879; *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937; *McCamey v. Hollister Oil Co. (Tex.)*, 241 S. W. 689.

¹⁰ *People v. Rose*, 219 Ill. 46, 76 N. E. 42; *In re Jones*, 172 N. Y. 575, 65 N. E. 570; *People v. Coleman*, 133 N. Y. 279, 31 N. E. 96, 16 L. R. A. 183; *West Side Oil Co. v. McDorman (Tex. Civ. App.)*, 244 S. W. 167.

¹¹ *People v. Coleman*, 133 N. Y. 279, 31 N. E. 96, 16 L. R. A. 183.

state where it was organized, but as a limited partnership, it has been held a corporation in another state in which it did business, for the purpose of taxation.¹²

§ 234. Distinction Between Joint Stock Companies and Partnerships.—At common-law, joint stock companies are regarded as partnerships and are governed by the same general rules applicable to partnerships.¹³ Its members are each liable for all its debts,¹⁴ in the same manner as ordinary partners.¹⁵ A distinction, however, exists between a joint stock company and an ordinary partnership, in that the death of a member does not ordinarily dissolve the joint stock company where it does have that effect in a partnership. And in a joint stock company there is no *delectus personae* as in the partnership.¹⁶ In a partnership each member speaks and acts as the agent of the firm, while this is not true of a joint stock company.¹⁷ Trustees or managers of a joint stock company conduct its affairs and an individual member of such a company has no power to sell or otherwise dispose of its property.¹⁸

§ 235. Powers of Directors or Trustees.—Directors or trustees of a joint stock company may be given power to buy and sell real estate in behalf of the concern, and practically the manage-

¹² *Tide Water Pipe Co. v. State Board of Assessors*, 57 N. J. L. 516, 31 Atl. 220, 27 L. R. A. 684.

¹³ *McConnell v. Denver*, 35 Cal. 365, 95 A. D. 107; *Shamburg v. Abbott*, 112 Pa. 6, 4 Atl. 518; *Werner v. Leisen*, 31 Wis. 169.

¹⁴ *Lyon v. Denison*, 80 Mich. 371, 45 N. W. 358, 8 L. R. A. 358; *West Side Oil Co. v. McDorman* (Tex. Civ. App.), 244 S. W. 167.

¹⁵ *Carter v. McClure*, 98 Tenn. 109, 38 S. W. 585, 60 A. S. R. 842, 36 L. R. A. 282; *Oil Lease, etc., Syndicate v. Beeler* (Tex. Cr.), 217 S. W. 1054.

¹⁶ *Machinists' National Bank v. Dean*, 124 Mass. 81; *Spotswood v. Morris*, 12 Idaho 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665; *People v. Wemple*, 117 N. Y. 136, 22 N. E. 1046, 6 L. R. A. 303; *Carter v. McClure*, 98 Tenn. 109, 38 S. W. 585, 60 A. S. R. 842, 36 L. R. A. 282; *Oil Lease, etc., Syndicate v. Beeler* (Tex. Cr.), 217 S. W. 1054; *Hibbs v. Brown*, 190 N. Y. 167, 82 N. E. 1108.

¹⁷ *Oliver's Estate*, 136 Pa. 43, 20 Atl. 527, 20 A. S. R. 894, 9 L. R. A. 421.

¹⁸ *Spotswood v. Morris*, 12 Idaho 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665; *Oil Lease, etc., Syndicate v. Beeler* (Tex. Cr.), 217 S. E. 1054, citing 20 R. C. L. 1076, sec. 323; *Betts v. Hackathorn*, 159 Ark. 621, 252 S. W. 602, 31 A. L. R. 847; *Roberts v. Anderson*, 226 Fed. 7, 141 C. C. A. 121.

ment of the whole business of the company may be entrusted into their hands, including discretion as to the declaration of dividends.¹⁹

§ 236. Associates May Be Sued by Name of Association.—

In many states, such as California, Idaho, and Montana, it is provided by statute that when two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates.²⁰ In other states, it is customary for the statute regulating joint stock companies to provide that suits at law may be brought by or against such companies in the name of the president,¹ or in the name of the treasurer.² In Minnesota it has been held that service of process may be made on the local agent and that companies of this character may be served like corporations.³

§ 237. Dissolution of Joint Stock Companies.—Where a joint stock company is formed for a special period, it cannot be dissolved by one member without the unanimous consent of the others.⁴ However, where the articles of association so provide, the affairs of the company may always be wound up in accordance therewith.⁵ Courts of equity ordinarily have jurisdiction to decree the dissolution in proper cases and to close out the business of the concern.⁶

§ 238. Articles of Agreement of a Joint Stock Company.

This Instrument, made this 18th day of September, 1895, Witnesseth, that whereas, Benjamin F. Morris was the owner of the following lands in

¹⁹ *Oliver's Estate*, 136 Pa. 43, 20 Atl. 527, 20 A. S. R. 894, 9 L. R. A. 421; *Spotswood v. Morris*, 12 Idaho 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665.

²⁰ California Code of Civil Procedure, sec. 388; Idaho Comp. Stats. 1919, sec. 6656; Montana Rev. Codes, 1921, sec. 9089.

¹ *People v. Wemple*, 117 N. Y. 136, 22 N. E. 1046, 6 L. R. A. 303.

² *People v. Coleman*, 133 N. Y. 279, 31 N. E. 96, 16 L. R. A. 183.

³ *State v. Adams Express Co.*, 66 Minn. 271, 68 N. W. 1085, 38 L. R. A. 225.

⁴ *Von Schmidt v. Huntington*, 1 Cal. 55; *Waterbury v. Merchants' Union Express Co.*, 50 Barb. (N. Y.) 157.

⁵ *Tindel v. Park*, 154 Pa. 36, 26 Atl. 300.

⁶ *Randolph v. Nichol*, 74 Ark. 93, 84 S. W. 1037.

Idaho county, Idaho, to wit: (Here follows a description). . . . And he agreed with the following persons, to wit: Henry Dernham and William Kauffman, of Moscow, Idaho, John P. Vollmer and Robert Schleicher, of Lewiston, Idaho, and Wallace Scott, of Mt. Idaho, Idaho, to join them in a syndicate to purchase said lands of him and resell the same and divide the profits thereof, in which syndicate each of said persons should take and pay for a one-eighth share and be the owner of and entitled to a like portion of the profits thereof, and said Benjamin F. Morris should take and pay for a three-eighths share, and be the owner of and entitled to a like portion of the profits thereof, and said Benjamin F. Morris should take and pay for a three-eighths share, and be the owner of and entitled to a like portion of the profits thereof. . . . And whereas, said Benjamin F. Morris has by deed of even date herewith conveyed to Robert Schleicher in trust for this syndicate according to these articles of agreement said 2,720.80 acres, all except the 160 acres last above described, subject to a mortgage on which there is due of principal \$9,000 besides interest, and to the payment by the syndicate, including Benjamin F. Morris, of \$4,320.00 of the purchase money, with interest thereof from the 1st day of May, 1895, at the rate of 10 per centum per annum until paid:

Now, therefore, in order to facilitate the accomplishment of the purposes of said syndicate, we, the said parties, hereby organize ourselves into an association, and agree as follows:

(1) That the name of said association shall be the Denver Townsite Company, and the principal office of said association shall be at Lewiston, Idaho.

(2) That the members of the association, and their executors, administrators, heirs, and assigns, shall, in proportion to their interests therein, pay the obligations thereof, and share in the profits thereof.

(3) That the title to said lands is to be subject to all the terms and provisions, powers and trusts, of these articles of agreement and the amendments and alterations thereof which may be made from time to time.

(4) That this association shall not be dissolved, or any of the powers herein given, or which may be given, be revoked by any transfer at any time of the interest of any member thereof, or any part thereof, whether by act of the party, or by operation of law, or by the death of any member or members thereof, or their successor or successors, at any time.

(5) That, in order to maintain and continue this association, no member or members, or successor or successors, thereof shall for five years from date hereof have any right or partition of said lands or any of them, but shall have such right thereafter. These articles of agreement shall be binding upon the parties, their assigns whether by act of party or operation of law, and their heirs, devisees, executors, and administrators.

(6) The interests of the members of this association in the property thereof shall be represented by eight certificates, which shall be and are hereby agreed to be personal property. The members have only a right to the avails or proceeds of said property, the title thereto, both legal and

equitable, remaining and being in said trustee, his successor or successors in trust. (Here follows a form of a shareholder's certificate.)' . . .

(7) The certificate of shares in, and interest of members of this association in, its property can only be transferred in the manner prescribed in the form of certificate last above set forth, and not then unless all obligations of the assignor to the association are paid. No transfer shall be made for five days immediately before a meeting of the shareholders, or for five days immediately before the time when a dividend is payable.

(8) That the annual meeting of the shareholders shall be held in Lewiston, Idaho, at the office of First National Bank of Lewiston, Idaho, on the second Tuesday of May each year, at 2 o'clock p. m. That no meeting of shareholders shall be competent to transact business unless a majority in interest of the shareholders shall be represented; but less than a majority may adjourn from day to day or until such time as may be deemed proper. That at such annual meeting a president, vice president, and secretary for the ensuing year shall be elected by ballot, to serve one year, until their successors are elected and qualified. Special meetings of the shareholders may be called by any three shareholders by notice in writing, by mail or otherwise, to meet at Lewiston, Idaho, at the office of the First National Bank of Lewiston, Idaho, at an hour to be designated in the notice, such notice to be mailed or served not less than five days prior to date of meeting. When all shareholders assemble and so agree, either in person or by proxy appointed in writing, a special meeting may be held without any notice. That at all meetings of the shareholders each shareholder shall be entitled to cast one vote for each certificate held by him. He may vote in person or by proxy appointed in writing. The president or presiding officer may vote his own share or shares, but shall not have power, in addition as presiding officer, to decide a tie vote. The secretary shall keep a record of each meeting.

(9) That a majority in interest of the shareholders of this association, at any meeting thereof, shall have as full and ample power and authority to do, or authorize to be done, any and every thing of every nature whatsoever, as an individual owner of said lands in fee simple would have, provided only that they cannot issue, or authorize the issue of, any negotiable instruments, or borrow money, except to renew, or extend, or take up, or pay off, a mortgage or vendor's lien on said lands or some part thereof. That the only other manner in which they can raise money (except from income or sale of property) is by levy of assessments as hereinafter provided, upon the shareholders. That nothing except the consent of all the shareholders shall authorize the creation of any personal liability against the shareholders, and all contracts entered into shall be limited to creating a liability against the property of the association.

(10) The officers of this association shall consist of a president, vice president, and secretary, who shall be elected by the shareholders, and shall perform the duties usually appertaining to their respective offices, except that the secretary shall perform, also, the duties usually appertaining to the office of treasurer. They shall hold office for one year and until

their successors are elected and qualified. . . . No person shall hold any of those offices unless he be a shareholder, and a transfer of his share as provided in these articles of agreement shall operate as a resignation by him. . . .

(11) The secretary of this association is hereby required, authorized, and empowered to sell, contract for sale of, and convey, by such form of conveyance as he may deem best, all or any part of the lands, or lots, or blocks contained in the 2,720.80 acres above described, for such price or prices, and upon such terms, at public or private sale, as he may deem best, subject to the directions of the shareholders; and no purchaser need see to the application of the purchase money or to any such directions of the shareholders, or to the qualifications of the secretary as such officer. He shall have these articles of agreement and said deed to him recorded in Idaho county. The secretary shall also have power to sell all products which may be received from any of said lands when and for such prices and on such terms as he may deem best. He may, out of any money in his hands as secretary or treasurer, pay the taxes on said lands, insurance premiums on any property of the association, or any property on which it may have an encumbrance, and interest on any encumbrance or encumbrances on said lands or any part thereof, also all necessary repairs at the wells, or of fences or other property on said lands, and all expenses incident to construction of fences, made necessary by any changes in roads. He may take any action he may deem most for the interest of the association in the matter of any action or proceedings of the county commissioners concerning roads. The secretary shall incur no obligations which shall altogether exceed \$500 without additional authority. He may deposit any money on hand in his name as treasurer of Denver Townsite Company in any national bank and check out the same. He may procure such record books and stationery and blanks, from time to time, as may be necessary. He shall keep an account and record of the affairs of the company, and render accounts and reports at the annual meetings, and record the same in the record book of such meetings, and whenever requested by vote at any meeting, render accounts and pay over any money due the Denver Townsite Company.⁷

§ 239. Articles of Agreement of a Joint Stock Company. [Another Form.]

THE BANGOR JOURNAL.

Agreement for establishing and carrying on a newspaper enterprise under the above name at Bangor, by a joint stock association, of which William A. Blake, George W. Ladd and Albion P. Bradbury, and the survivors and successors of them are trustees, and the persons whose names are hereto annexed as subscribers for stock, are shareholders in proportion to the number of shares set against their respective names.

1. The business of said association shall be the publishing of the daily

⁷ Spotswood v. Morris, 12 Idaho 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665.

and weekly newspaper under the above name, and such other business as appertains to a printing office.

2. The property shall consist of the stock, tools, machinery and materials for a printing office, lately purchased by said William A. Blake, in his own name, with money subscribed for that purpose by the undersigned and others; such additions as may be from time to time made to the same, and the subscription list and good will of the paper and the office. The shares shall be fixed at the price of ten dollars each; on receipt of that fund from any person for that purpose, the trustees may issue certificates of stock to such persons. The whole number of shares may be fixed hereafter by the trustees, as the business of the office may make desirable. Shareholders shall be entitled to one vote, at the meetings, for each share held by them.

3. The trustees, the survivors and successors of them shall hold and manage all the property and shall carry on and have exclusive control of the whole business aforesaid, subject to the restrictions which are herein contained; exercising among other powers for that purpose, absolute discretion as to the matter to be published in the paper, as to what editors, publishers, agents, or other assistants, they may employ; fixing terms and prices, hiring and fitting up the office, collecting debts and subscriptions of all kinds, and making contracts which they deem necessary in carrying on the business.

4. They may make, from time to time, such assessments equal upon each share, as may be necessary to carry on the business upon the scale it has begun in; but the whole amount of assessments on any share shall not exceed the sum of ten dollars; and the undersigned subscribers to stock hereby agree to and with the said trustees, their survivors and successors, that we, each for himself alone, will pay them in assessments as the same may be made for the above purpose, a sum not exceeding said amount of ten dollars for each share subscribed for by us respectively, in addition to said price of ten dollars per share, which we have already paid for the certificate. And it is expressly stipulated that we are to be no further liable for debts incurred by said trustees in said business.

5. The money received for the sale of stock certificates shall be applied to enlarging the business and facilities of the paper and office, by purchasing materials and employing agents to solicit subscriptions for the paper, and for stock; unless it shall be necessary from time to time to employ a part of the same for the payment of the running expenses of the business, in which case it shall be replaced from the proceeds of the business as soon as may be. It being the intention that the current expenses of carrying on the business, salaries, rents, wages, etc., shall be defrayed from the proceeds and assessment, and that any increase to the property shall be made out of the funds received for stock. No assessments for the purpose of increasing the property shall be made.

6. The trustees may mortgage the property to raise money for carrying on the business, if necessary, and may sell and dispose of the property whenever they shall receive an offer they deem advantageous therefor;

first, however, calling a shareholders' meeting and giving, at such meeting, the holders of a majority of all the shares, the preference as purchasers at the price offered.

7. The net profits earned in the business, not needed to enlarge the office or increase the property, or replace loss occasioned by wear and tear shall be divided from time to time, by the trustees among the shareholders, pro rata. In case of sale, the trustees shall close up the whole concern and divide any proceeds remaining among the shareholders pro rata.

8. Shareholders' meetings may be called by the trustees at Bangor, by notice published for three days in the Daily Journal, or some other daily paper in Bangor, should the Journal be discontinued. At such meetings shareholders may be represented by written proxy; and provided fifty shares of the stock be represented at the meeting, the vote of a majority of the stock represented shall be binding in all matters where shareholders may vote. The trustees shall call a meeting on written request of the holders of ten shares, or of five individual stockholders; if they refuse, then ten stockholders holding at least fifty shares in all, may call a meeting which shall have the same power as a meeting called by the trustees.

9. In case of a vacancy, from any cause, in the board of trustees, or inability of any one of them to act, the remainder shall call a shareholders' meeting and fill that vacancy by ballot, with some person from among the shareholders, who shall succeed to all the rights of his predecessor. And his associates shall make such conveyance to him as may be necessary to put him in that position, if any be necessary.

10. The stockholders, at a meeting duly called, may, by such vote as aforesaid, remove any or all of the trustees, and fill their places as in case of vacancy. And the persons removed shall make such conveyance as may be necessary, if any, to vest all the powers and rights in their successor so chosen.

11. The concurrence of a majority of the trustees, only, shall be necessary to give validity to any act they are authorized hereby to do.

12. The trustees may appoint one of their number treasurer, who shall keep the trustees' accounts, showing the state of affairs, always open to the reasonable inspection of any shareholder.

13. The trustees shall be fully indemnified out of the trust property, and have a lien thereon for all loss, cost, charges, and expenses they may incur in the management of said business, and as security for such as they from time to time incur. But the shareholders are to incur no loss beyond that of the shares paid for, and the sum before provided as assessments, respectively, and the trustees shall discontinue the publication and close the concern, whenever in their judgment it shall be so losing a matter as to require more funds to aid it than the stockholders are bound hereby to pay, in addition to what it may be reasonably hoped to realize from contributions.

14. Said trustees shall not be liable except for such loss as may arise

from gross negligence or wilful default, and each shall be liable only for his own acts or omissions.

15. And said William A. Blake, in whose name said property was purchased, hereby conveys one undivided third part of the same to each of said other trustees; and all said trustees hereby acknowledge that they jointly hold said property in trust, upon the terms and conditions herein set forth.

In witness of all which said parties have set their hands this
..... (Signed by Blake, Ladd & Bradbury, trustees.)^s

^s Holt v. Blake, 47 Me. 62.

CHAPTER XXI.

MASSACHUSETTS TRUSTS.

- § 240. Massachusetts Trusts—In General.
- § 241. Massachusetts Trusts—Validity of.
- § 242. Test to Determine Legal Nature of Organization.
- § 243. Purposes for Which Massachusetts Trusts May Be Formed.
- § 244. Massachusetts Trusts as Within Blue Sky Laws.
- § 245. Provision in Declaration of Trust Limiting Liability of Beneficiaries.
- § 246. Power of Trustees or Beneficiaries to Maintain or Defend Action.
- § 247. Massachusetts Trusts as Affected by Rule Against Perpetuities.
- § 248. Declaration of Common-Law Real Estate Trust.
- § 249. Common-Law Real Estate Trust Agreement and Declaration of Trust.
- § 249a. Agreement and Declaration of Trust. [Common Form.]
- § 249b. Application for Leave to Issue and Sell Securities.

§ 240. **Massachusetts Trusts — In General.**—Massachusetts Trusts are trusts formed for the purpose of carrying on a business. While they are very similar to common-law joint stock companies, they differ from them in that they require all the property in the business to be held in trust. This form of business organization is sometimes called “business trusts,” “common-law trusts,” “voluntary associations,” etc., but it is more often referred to as a “Massachusetts Trust,” doubtless because such plan of transacting commercial, trading, and almost every other character of business for profit was first adopted and put in use in America in the state of Massachusetts, and because such companies have been more numerous in that state than in others.¹

The trust is usually formed by two or more persons executing a trust deed or declaration of trust in which personal or real property which comprises the trust *res* is transferred to one or more trustees. The deed mentions the terms of the trust, the nature of the business to be carried on and the place of business. It also provides for the issuance of certificates of shares which are transferable like shares of stock in a corporation. To constitute a trust of this kind, it is necessary for the deed of trust to give the trust-

¹ *McCamey v. Hollister Oil Co.* (Tex. Civ. App.), 241 S. W. 689.

tees not only the legal title to the property, but also the entire control and management of the business,² since if it appear that the trustees are to act merely as agents for the certificate holders, the business venture will be held to be nothing more than a common-law joint stock company or partnership.³

Business trusts have been referred to as partnerships, where the shareholders retain control over the trustees and have had some authority as to the conduct of the business, but where the beneficiaries retain no control over the trustees, and are not in fact associated in the actual carrying on of the business, but are limited in interest to having the trust administered in their interest, it is held that it should be regarded as a strict or pure trust.⁴

§ 241. **Massachusetts Trusts—Validity of.**—In the absence of a prohibitory or controlling statute, it seems to be almost universally conceded that business trusts of the character known as "Massachusetts Trusts," are, generally speaking, legal and valid. In most states the courts, either expressly or impliedly, have recognized the validity of such trusts.⁵ However, in Washington it has been held that, by virtue of mandatory provisions

² *McCamey v. Hollister Oil Co.* (Tex. Civ. App.), 241 S. W. 689.

³ *Neville v. Gifford*, 242 Mass. 124, 136 N. E. 160; *Howe v. Wichita State Bank & Trust Co.* (Tex. Civ. App.), 242 S. W. 1091; *Re Associated Trust* (D. C.), 222 Fed. 1012; *Home Lumber Co. v. Hopkins*, 107 Kan. 153, 190 Pac. 601, 10 A. L. R. 879; *State v. Cosgrove*, 36 Idaho 278, 210 Pac. 393.

⁴ *State v. Cosgrove*, 36 Idaho 278, 210 Pac. 393; *Crocker v. Malley*, 249 U. S. 223, 39 S. Ct. 270, 63 L. Ed. 573, 2 A. L. R. 1601; *Mayo v. Moritz*, 151 Mass. 481, 24 N. E. 1083; *Williams v. Milton*, 215 Mass. 1, 102 N. E. 355; *Foster v. Boston*, 215 Mass. 31, 102 N. E. 359; *Connally v. Lyons*, 82 Tex. 664, 18 S. W. 799, 27 A. S. R. 935.

⁵ *Hart v. Seymour*, 147 Ill. 598, 35 N. E. 246; *Merchants Nat. Bank v. Wehrmann*, 69 Ohio St. 160, 68 N. E. 1004; *Pittsburg Wagon Works' Estate*, 204 Pa. 432, 54 Atl. 316; *Bartlett v. Gill*, 221 Fed. 476; *Eliot v. Freeman*, 220 U. S. 178, 55 L. Ed. 424, 31 S. Ct. 360; *Crocker v. Malley*, 249 U. S. 223, 39 S. Ct. 270, 63 L. Ed. 573, 2 A. L. R. 1601; *Greene County v. Smith*, 148 Ark. 33, 228 S. W. 738; *McMillan v. Greenamyre*, 50 Cal. App. 601, 195 Pac. 734, 53 Cal. App. 13, 199 Pac. 841; *Ridge v. State*, 192 Ind. 639, 137 N. E. 758; *Harris v. United States Mexico Oil Co.*, 110 Kan. 532, 204 Pac. 754; *Sleeper v. Park*, 232 Mass. 292, 122 N. E. 315; *Bartley v. Andrews*, 202 N. Y. Supp. 227; *Bingham v. Graham* (Tex. Civ. App.), 220 S. W. 105; *Spotswood v. Morris*, 12 Idaho 360, 85 Pac. 1094, 6 L. R. A. (N. S.) 665.

of the state constitution, so-called common-law trusts are prohibited from doing business in the state, so that they can have no legal status in its courts.⁶

§ 242. Test to Determine Legal Nature of Organization.—

The power of control of the management of the association as actually set forth in its articles is the test generally applied in determining whether a business association organized as a trust is a trust or is a partnership or joint stock association.⁷ Under this rule, it has been held that if the certificate holders have the power of control of the management of the association, it is a partnership, and that if they have not, and the absolute power of control is in the trustees, it is a trust.⁸ However, to render a business association a partnership, it is not necessary that the shareholders have actually exercised the power of control, it being sufficient if the power is given by the articles of association, though never exercised.⁹

§ 243. Purposes for Which Massachusetts Trusts May Be Formed.—

In jurisdictions where Massachusetts trusts may be formed at all, there seems to be no limitation upon the purpose or object for which such a trust may be created, provided, of course, that the same is ordinarily legitimate and lawful. Such trusts have been formed to deal in various ways with both real and personal property. Examples of the purposes for which common-law real estate trusts have been formed are as follows: Purchasing, improving, holding, and selling lands and buildings;¹⁰ purchasing, improving and managing real estate for gain;¹¹ purchase of real estate, and establishment and operation of a factory thereon,

⁶ *State ex rel. Range v. Hinkle*, 126 Wash. 581, 219 Pac. 41. Compare *Joseph v. Carroll*, 126 Wash. 661, 219 Pac. 429.

⁷ *Simson v. Klipstein*, 262 Fed. 823; *Betts v. Hackathorn*, 159 Ark. 621, 252 S. W. 602, 31 A. L. R. 847; *Flint v. Codman*, 247 Mass. 463, 142 N. E. 256.

⁸ *Dana v. Treasurer*, 227 Mass. 562, 116 N. E. 941; *Neville v. Gifford*, 242 Mass. 124, 136 N. E. 160; *Morehead v. Greenville Exchange Nat. Bank (Tex.)*, 243 S. W. 546.

⁹ *Simson v. Klipstein*, 262 Fed. 823; *McCamey v. Hollister Oil Co. (Tex. Civ. App.)*, 241 S. W. 689.

¹⁰ *Eliot v. Freeman*, 220 U. S. 178, 31 S. Ct. 360, 55 L. Ed. 424.

¹¹ *Williams v. Boston*, 208 Mass. 497, 94 N. E. 808.

for the manufacture of aniline oil, etc.;¹² developing an oil and gas lease;¹³ real estate and loan business;¹⁴ purchase, sale, exchange and development of oil and gas, or mineral lands, on leases;¹⁵ hold real estate and improve and lease buildings erected thereon;¹⁶ purchase, sale, care, management, etc., of fruit-bearing lands;¹⁷ purchase and sale of oil lands, development for oil, gas, minerals and production and transportation of same;¹⁸ own and conduct any business, trade, or enterprise of any kind, and to buy and sell property of every kind, character, and description;¹⁹ holding, maintaining, and acquiring lands, water power, paper manufacturing plants, tenements, etc., operating such plants, etc., with the power of owners and finally converting the same into money and distributing the proceeds among the beneficiaries.²⁰

§ 244. Massachusetts Trusts as Within Blue Sky Laws.—Business trusts of the character known as “Massachusetts Trusts” have been held to be within the operation of a blue sky law declaring every person, corporation, copartnership, company, or association organized in the state, whether incorporated or not which shall sell or negotiate for sale of any contract, stock, bonds, or other securities issued by him, them, or it, to be an investment company which is forbidden to sell its securities without approval from the commissioner so that it cannot sell certificates of interest in itself without such approval.¹

¹² *Simson v. Klipstein*, 262 Fed. 823.

¹³ *Weeks v. Sibley*, 269 Fed. 155.

¹⁴ *Fischer-Schein Syndicate v. Lee*, 295 Fed. 485.

¹⁵ *Greene County v. Smith*, 148 Ark. 33, 228 S. W. 738.

¹⁶ *Sleeper v. Park*, 232 Mass. 292, 122 N. E. 315.

¹⁷ *Horgan v. Morgan*, 233 Mass. 381, 124 N. E. 32.

¹⁸ *Davis v. Hudgins* (Tex. Civ. App.), 225 S. W. 73.

¹⁹ *McCamey v. Hollister Oil Co.* (Tex. Civ. App.), 241 S. W. 689.

²⁰ *Crocker v. Malley*, 249 U. S. 223, 39 S. Ct. 270, 63 L. Ed. 573, 2 A. L. R. 1601.

¹ *King v. Commonwealth*, 197 Ky. 128, 246 S. W. 162, 27 A. L. R. 1159. See, also, *Schmidt v. Stortz*, 208 Mo. App. 439, 236 S. W. 694; *People v. Clum*, 213 Mich. 651, 182 N. W. 136; *In re Girard*, 186 Cal. 718, 200 Pac. 593; *Matteson v. Weaver*, 229 Mich. 495, 201 N. W. 473; *Wagner v. Kelso*, 195 Iowa 959, 193 N. W. 1; *State v. Cosgrove*, 36 Ida. 278, 210 Pac. 393; *Home Lumber Co. v. Hopkins*, 107 Kan. 153, 190 Pac. 601, 10 A. L. R. 879; *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937; *McCamey v. Hollister Oil Co.* (Tex. Civ. App.), 241 S. W. 689.

§ 245. Provision in Declaration of Trust Limiting Liability of Beneficiaries.—Where a declaration of trust vests absolute control in the trustees so as to render them personally and individually liable for obligations incurred on behalf of the trust, and gives the *cestui que trust* the right to share in the profits only, it has been held that the declaration may exempt the beneficiaries from personal liability, and that where it does so provide, they cannot be held liable either as partners or principals for debts of the enterprise.² And where the declaration of a business trust limited liability to the trust property, and the organization was such as to render it a true trust as distinguished from a partnership, it was held that the holders of the stock were not under personal and individual liability for any of the obligations or indebtedness of the trust association beyond the amount represented by the shares belonging thereto.³ In Texas, however, it is held that the individual members of an unincorporated association organized as a business trust cannot, by so organizing, relieve themselves of joint and several liability on firm obligations.⁴

§ 246. Power of Trustees or Beneficiaries to Maintain or Defend Action.—In some states it is provided by statute that when two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates.⁵ And under a similar statute it has been held that an unincorporated association organized under a declaration of trust, and styling itself a common-law trust, may maintain a suit in its own name without naming its trustees, to enjoin a threatened breach of a contract with it and a trespass against its property.⁶ However, where the power of control of an enterprise

² *Betts v. Hackathorn*, 159 Ark. 621, 252 S. W. 602, 31 A. L. R. 847. See, also, *Bank of Topeka v. Eaton*, 100 Fed. 8; *Williams v. Boston*, 208 Mass. 497, 94 N. E. 808; *Hussey v. Arnold*, 185 Mass. 202, 70 N. E. 87.

³ *Rhode Island Hospital Trust Co. v. Copeland*, 39 R. I. 193, 98 Atl. 273.

⁴ *Wells v. Mackay Teleg. Cable Co.* (Tex. Civ. App.), 239 S. W. 1001. See, also, *McCamey v. Hollister Oil Co.* (Tex. Civ. App.), 241 S. W. 689.

⁵ California Code of Civil Procedure, section 388, Idaho Comp. Stats. 1919, sec. 6656; Montana Rev. Codes 1921, sec. 9089.

⁶ *Graham v. Omar Gasoline Co.* (Tex. Civ. App.), 253 S. W. 896. Compare *Hull v. Newhall*, 244 Mass. 207, 138 N. E. 249.

organized in the form of a business trust is given to the certificate holders in the articles of association, but the trustees are otherwise given full and general authority to do all things necessary to the conduct of the business, it has been held that such trustees were the proper parties plaintiff in an action on behalf of the association relating to its property.⁷ It has also been held that beneficiaries of such a business trust may maintain an equitable action against the trustees to restrain the voluntary payment of a tax which has been illegally assessed by the federal government.⁸ And so may the beneficiaries maintain a suit against the trustees for the appointment of a receiver upon allegations of insolvency, misappropriation, and loss of trust funds through nonaction, fraud, etc.⁹

§ 247. Massachusetts Trusts as Affected by Rule Against Perpetuities.—The rule against perpetuities, it has been held, is not violated by a business trust organized for an indefinite term, at least where the trust real estate was to be conveyed to the trustees to be held by them until they exercised their discretion to sell the same.¹⁰ Nor is a common-law building association trust illegal merely because no termination of the trust or sale of the corpus thereof would necessarily occur within the period of a life or lives in being at the time of the creation of the trust and twenty-one years, or because the certificate holders could not have partition of the land or compel its sale except by a three-fourths vote.¹¹

§ 248. Declaration of Common-Law Real Estate Trust.

Know all men by these presents that we, Robert Homans and Reginald Foster, both of Boston, in the county of Suffolk and commonwealth of Massachusetts, being about to take title to a certain parcel of land with the buildings thereon, numbered 50 Essex Street, situated in said Boston,

⁷ *Simson v. Klipstein*, 262 Fed. 823. See, also, *Fischer-Schein Syndicate v. Lee*, 295 Fed. 485; *Hull v. Newhall*, 244 Mass. 207, 138 N. E. 249; *Cranfill v. Swann Petroleum Co.* (Tex. Civ. App.), 254 S. W. 582; *McMillan v. Greenamyer*, 50 Cal. App. 601, 195 Pac. 734.

⁸ *Weeks v. Sibley*, 269 Fed. 155.

⁹ *Bingham v. Graham* (Tex. Civ. App.), 220 S. W. 105; *Davis v. Hudgins* (Tex. Civ. App.), 225 S. W. 73; *Dunbar v. Broomfield*, 247 Mass. 372, 142 N. E. 148.

¹⁰ *Hart v. Seymour*, 147 Ill. 598, 35 N. E. 246.

¹¹ *Howe v. Morse*, 174 Mass. 491, 55 N. E. 213.

and bounded southeasterly on Chauncy Street, southwesterly on Essex Street, northeasterly on Harrison Avenue, and northerly, northwesterly again and northeasterly on land now or late of F. M. Frost et al., containing 5,186 square feet, more or less, and being all the land recently owned by the trustees under the will of John Homans, late of said Boston, who died in 1868, hereby declare that we will, and our heirs, successors, administrators and executors shall hold said parcel of land and any and all property, real and personal, which may be conveyed or transferred to us as trustees hereunder, upon the trusts hereinafter set forth for the benefit of the owners of the shares hereinafter described.

1. The term "trustees" hereinafter used shall mean not only those above mentioned, but whoever may be trustee or trustees for the time being. The term "shareholder" hereinafter used shall mean holder of record of a certificate of shares hereunder.

2. The trustees shall issue certificates of shares of the aggregate amount of two hundred and forty thousand dollars divided into shares of the par value of one hundred dollars each, and shall deliver said certificates to the persons by whom the parcel of land above described is conveyed to them delivering to each of said persons shares bearing the same proportion to the total amount of the shares to be issued as above stated as his or her undivided interest in said parcel bears to the total value of the same. The trustees shall also have the power to issue certificates for additional shares hereunder if they are authorized so to do by vote of a majority of the shareholders as provided in clause 10, but not otherwise.

3. The trustees shall have entire control and management of the trust property. They may mortgage or lease the same, or any part thereof, from time to time on such terms and for such times as they think best: Provided that they shall not mortgage said property or any part thereof for more than twenty thousand dollars unless authorized so to do by vote of a majority of the shareholders as provided in clause 10. They may also sell said property or any part thereof at any time and from time to time on such terms as they think best. They may borrow money for temporary exigencies or for adding to, repairing, rebuilding or furnishing any building on land held by them or for erecting new buildings on such land in such manner and on such terms as they think best, and may give their notes as trustees therefor. No purchaser, mortgagee, lessee or lender shall be responsible for the application of money paid or loaned to the trustees. The trustees may exchange land and purchase additional land for the purpose of straightening or altering boundary lines, and may grant, release and acquire easements. They may from time to time hire suitable offices for the transaction of the business of the trust and may incur such other expenses and employ such clerks and other servants, transfer agents, lawyers and brokers as they may think best, and they may execute, acknowledge and record any and all instruments necessary or convenient for the purposes of the trust. They or either of them may act as counsel when it is proper to employ counsel and receive reasonable compensation therefor. They may make all such contracts and do all such things as they

think best for the maintenance and management of the trust property and of the trust and may pay all expenses out of any assets of the trust.

4. The compensation of the trustees for their services as such shall amount to five per cent. of the gross income of the trust property, and in case of a sale of said property or any part thereof, one per cent. of the price for which the same is sold.

5. The trustees shall be responsible only for a willful breach of trust, and any trustee only for his own acts; and no trustee shall be required to give a bond. Any trustee may resign his office by a written instrument recorded with Suffolk deeds.

6. The number of trustees hereunder shall be kept at two, and each new trustee shall have the same powers as if originally named herein. In case said Reginald Foster ceases to be a trustee hereunder before the termination of the trust his successor shall be appointed by the Old Colony Trust Company, a corporation organized under the laws of said commonwealth and having a usual place of business in said Boston, by a writing recorded with said deeds, if said corporation is at the time the guardian of any child of the late Caroline Homans Priestley, wife of Neville Priestley, who is then a shareholder hereunder, but not otherwise.

7. When any trustee is absent from the commonwealth aforesaid, or unable to perform his duties, the remaining trustee shall have the power to act: Provided that in no case shall one trustee so acting do any act affecting the title of the trust property or incur any debt or liability exceeding in the aggregate five thousand dollars during any such period of absence or disability; and the certificate of any trustee as to such absence or disability shall be conclusive.

8. The trustees shall annually or oftener in their discretion divide the net income from the trust property among the shareholders; provided, however, that the trustees may set aside before paying any dividend whatever sum they see fit as a sinking or contingent fund, to be applied to repaying loans made by the trustees, whether unsecured or secured by mortgage on the trust property or otherwise; to making repairs to and alterations in said property; and to meeting extraordinary expenses. They may invest and reinvest said fund and any money they may have on hand at any time in any securities they see fit. Their decision as to what constitutes net income shall be conclusive on all parties.

9. The trustees may call meetings of shareholders at any time, and shall do so upon the written request of any shareholder. Notices of meeting shall be given at least five days beforehand by mail and every such notice shall state the purpose of the meeting called. Such notices shall be binding upon each shareholder if mailed postage prepaid to the address last given by him to the trustees, or in default thereof to his last known place of business or abode: Provided that notice to any shareholder who is a minor may be given to his guardian instead of to him. Notices shall be deemed to be given at the time that they are mailed as above stated.

10. Shareholders may vote at meetings in person or by proxy and in the case any shareholder is a minor, a proxy executed by his guardian will

be sufficient. The holders of a majority of the entire number of shares outstanding may, by vote at any meeting called for the purpose, authorize the trustees to issue shares hereunder in addition to those provided for by clause 2 and fix the price at which the same shall be issued, and may authorize the trustees to mortgage the trust property or any part thereof for any amount exceeding twenty thousand dollars for such times and on such terms as they see fit. The statements of one or more of the trustees contained in certificates relating to meetings of the shareholders, or other matters connected with the trust, and recorded with Suffolk Deeds, shall be conclusive upon all parties as to the facts therein stated.

11. The trustees shall not have any power or authority to enter into any contract that shall bind or affect the shareholders personally, or call upon them for any payment whatsoever other than the amounts of their respective subscriptions; but the trustees shall be entitled to indemnity against any and all liabilities which they may incur, or to which they may be subject, out of the trust property, and may make any contract hereby authorized in such manner that the same and any liability thereunder shall be enforceable only against the trust property, and all persons or corporations extending credit to, contracting with, or having any claims against the trustees shall look only to the property of the trust for the payment of any such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to or from the trustees, so that neither any trustee nor shareholder, present or future, shall be personally liable therefor.

12. Shares hereunder shall be personal property and shall be transferable only on the books of the trustees upon surrender of the certificates therefor. Transferees shall, upon issue of new certificates to them, become shareholders hereunder, and entitled to all the rights and subject to all the liabilities of the original subscribers hereto.

13. This trust, if not sooner terminated by sale of the property by the trustees, shall continue for twenty years after the death of the last surviving original trustee and of Katharine A. Homans, John Homans, Marian J. Homans, Helen Homans and William P. Homans, children of John Homans, late of said Boston, who died in 1903.

14. Upon the expiration of the said limit of twenty years the trustees shall sell any and all property then subject hereto. When all the trust property is sold either as provided in this clause or as hereinabove provided, the proceeds thereof after the payment of all the debts and expenses of the trust, the expenses of the sale and the commissions of the trustees shall be divided among the shareholders in proportion to the number of shares owned by them of record. In case any portion of the trust property is sold or taken by eminent domain and any other property still remains subject to the trust, the trustees may either divide the proceeds of the sale or the damages, obtained on account of the taking, after deducting the debts, expenses and commissions above mentioned or the expenses of obtaining such damages, among the shareholders in the proportions above

stated, or may hold the same and apply them in such manner as they may see fit to the purposes of the trust.

In witness whereof we hereunto set our hands and seals this first day of November, 1905.

ROBERT HOMANS. (Seal)

REGINALD FOSTER. (Seal)¹²

(Acknowledgment.)

§ 249. Common-Law Real Estate Trust Agreement and Declaration of Trust.

THE BOSTON REAL ESTATE TRUST AGREEMENT AND DECLARATION OF TRUST, MADE THIS FIRST DAY OF MAY, A. D. 1886.

We, the subscribers, hereby agree to and with each other, and in consideration of our mutual agreements as follows:

1. We agree to pay at any time within two years from the date hereof to the trustees hereunder, the amounts set against our names respectively, in such installments, and at such times as said trustees may require, but they shall not require any payment until the total amount subscribed amounts to two million dollars. In case any subscriber neglects to pay any installment of his subscription within twenty days after the date of call, the amount of his subscription then unpaid shall be canceled at the option of said trustees.

2. John Quincy Adams of Quincy, Robert Codman, Abbott Lawrence, Samuel Wells, and William Minot, Jr., of Boston, all of the commonwealth of Massachusetts, shall be and are hereby made trustees hereunder.

3. Notices delivered personally or mailed, with prepayment of postage, five days beforehand, to any subscriber hereto or any shareholder at the residence given on his subscription or stated in his certificate, or to the address given by him from time to time to said trustees shall be deemed binding.

4. Said trustees shall use all money paid to them as such, except as hereinafter provided, for the purchase and improvement of real estate in the commonwealth of Massachusetts, and all real estate so purchased shall be conveyed to them in joint tenancy as trustees hereunder.

5. Said trustees shall have as such as absolute control over and disposal of all real estate held by them at any time under this trust as if they were the owners thereof including the power to sell for cash or credit, at public or private sale, to mortgage with or without power of sale, to lease or hire for improvement or otherwise for a term beyond the possible termination of this trust or for any less term, to let, to exchange, to release and to partition. But said trustees shall not mortgage any real estate held by them for more than thirty per cent. of the value of the property so mortgaged, as determined by the last preceding assessment made for the pur-

¹² Priestley v. Treasurer, 230 Mass. 452 (declaration of trust reported in full in 120 N. E. 100).

pose of taxation. This provision shall not, however, affect the title of any mortgagee and no purchaser or mortgagee shall be liable for the application of money paid or lent. In granting leases or making contracts for buildings or alterations or repairs of buildings the signatures of a majority of said trustees shall be sufficient. In all leases and mortgages it shall be stipulated that the shareholders shall not be personally liable thereon.

6. Said trustees may set aside not more than ten per cent. of the annual income, for a contingent fund, or sinking fund, or both. They shall divide the net income of the property held by them under this trust among the shareholders annually or oftener at their discretion and their decision as to what constitutes net income from time to time shall be final. Said contingent or sinking fund and any money waiting investment may be put at interest or invested and reinvested in interest bearing securities by said trustees at their discretion.

7. Said trustees may from time to time hire suitable offices for the transaction of the business of the trust, appoint such officers and agents, including an agent for procuring subscriptions to this agreement, as they may think best, fix their compensation and define their duties. The compensation of said trustees shall not at any time exceed five per cent. of the income of the property held by them under this trust.

8. Said trustees shall issue certificates in such form as they shall deem best, for each sum of one thousand dollars or for multiples thereof paid to them under this agreement, but no certificate shall be issued for any less sum than one thousand dollars, which shall be deemed a share.

9. Shares may be transferred on the books of said trustees by the person named in the certificate thereof, his attorney or legal representative, upon the surrender of the certificate, and a new certificate shall be issued to the transferee, who shall thereupon become subject to the terms of this agreement, but no share shall be sold until the holder thereof shall have first in writing offered it for sale to said trustees, who shall as such trustees have the option for ten days after the receipt of such offer of buying the same at the last preceding appraisal made by them. They shall make such appraisal annually or oftener as they may deem best. Shares so purchased by said trustees may be held as part of said contingent or sinking fund, or sold by them at their discretion. Devises by will, distribution of the estates of persons dying intestate and distribution of trust funds among those entitled thereto upon the termination of trusts shall not be deemed sales for the purpose hereof.

10. Said trustees may from time to time at their discretion invite and receive further subscriptions for the purpose of increasing the capital of the trust giving preference upon such terms and conditions as they shall deem best to existing shareholders. All subscriptions shall be subject to the terms of this agreement.

11. No assessment shall ever be made upon the shareholders.

12. The books of said trustees shall always be open to the inspection of shareholders.

13. Any trustee under this agreement may resign his trust by a written

instrument signed by him and acknowledged in the manner prescribed for the acknowledgment of deeds, and such instrument shall be recorded in the registry of deeds for the county of Suffolk in said commonwealth. Any vacancy occurring from any cause at any time in the number of said trustees shall be filled by the remaining trustees by an instrument in writing acknowledged and recorded as aforesaid, and such new trustee shall have the same power as if originally named herein. When any trustee is absent from the commonwealth or incapable by reason of disease, the other trustees shall have all the powers hereunder, and any trustee may by power of attorney delegate his powers for a period not exceeding six months at any one time to any other trustee or trustees hereunder, provided that in no case shall less than three trustees actually exercise the powers hereunder. The term "said trustees" used in this agreement shall be deemed to mean those who are or may be trustees for the time being. No trustee shall be required to give a bond.

14. This trust shall continue for twenty years after the death of the last survivor of the following named persons: (Naming 20 persons.)

Provided that upon the request of three-fourths in value of the shareholders, signed and acknowledged in the manner prescribed for the acknowledgment of deeds, and recorded in said Suffolk registry of deeds, said trustees shall terminate the trust or convey the trust property to new or other trustees, or to a corporation, according to the terms of such request, and in the manner stated therein, being first duly indemnified for any outstanding obligation, and said trustees upon filing in said registry of deeds a certificate that they have complied with such request shall be under no further liability. In case this trust expires by the above limitation without action relative thereto by the shareholders, said trustees shall sell all property then held by them as such and divide the proceeds among the shareholders.

15. Said trustees shall be responsible only for a willful breach of trust, and each shall be responsible only for his own acts.

16. Meetings of the shareholders may be called by any two of the trustees and shall be called upon the written request of five or more shareholders. The shareholders may for their own government pass by-laws and elect necessary officers, and may instruct the trustees hereunder in any manner not inconsistent with the powers herein or hereafter given said trustees, or with the acquired rights of third parties. The vote or agreement in writing of three-fourths in value of the shareholders shall be binding upon all and upon the trustees and this agreement may be altered or added to accordingly, but the rights of third persons shall not be affected, nor shall any third person be deemed to have notice thereof, until a certificate setting forth such vote or agreement, signed by a majority of the trustees and duly acknowledged, shall be recorded in the registry of deeds for the county of Suffolk and such certificate shall be conclusive as to the validity of the vote certified and all facts therein stated. A like certificate so recorded shall also be conclusive as to all facts affecting title.

In witness whereof, we have hereunto set our hands and stated the amount of our respective subscriptions on the day and year above written.

(Signed by the trustees and by subscribers for shares to the aggregate of \$2,000,000.)¹³

§ 249a. Agreement and Declaration of Trust. [Common Form.]

This agreement, made this 16th day of April, 1927, between certain persons, desiring to form a business trust, sometimes known as a "Massachusetts Trust," who shall become parties to this agreement by signing the same, hereinafter called the shareholders, parties of the first part, and, and, hereinafter called the Trustees, the parties of the second part.

Whereas it is proposed that the Trustees shall acquire from the shareholders, upon the terms and conditions herein contained, certain property and cash, and shall employ and manage the same and all other property which they may hereafter acquire as such Trustees, in the manner hereinafter stated; and it is likewise proposed that the beneficial interest in the property, from time to time held by the Trustees and in the business conducted by them, shall be divided into shares to be evidenced by certificates therefor, as hereinafter provided.

Now, therefore, the Trustees hereby declare that they will hold said property and cash so agreed to be paid to them and all other funds and property which hereafter may be acquired by them as such Trustee, together with the proceeds thereof, in trust to manage, invest, reinvest and dispose of same for the benefit of the holders from time to time of the certificates of shares issued and to be issued hereunder in the manner and subject to the stipulations herein contained.

ARTICLE I.

The Trustees, in their collective capacity, shall be designated so far as practicable, as the "Western Financial Company" and under that name shall, so far as practicable, conduct all business and execute all instruments in writing, in the performance of their trust.

ARTICLE II.

The nature of the business, and the objects and purposes to be transacted, promoted and carried on by the Western Financial Company are:

(a) To act as the agent or representative of corporations, persons and individuals in investing funds of such persons, firms or corporations in corporate securities, bonds, stocks or other investments, and to generally give to such persons as may require the same advice in regard to such investments, and to furnish to such persons, firms and corporations written reports of the condition of corporations issuing securities, and to generally

¹³ Priestley v. Treasurer, 230 Mass. 452 (declaration of trust reported in full in 120 N. E. 100).

advise clients and customers in regard to investments to such bonds, stocks or other securities, and to receive a compensation from such persons dealing with and receiving the benefit of the Western Financial Company's advice and counsel, and also to receive and accept compensation for acting as the agent or representative of such persons, firms or corporations.

(b) To buy, sell and generally to deal in the stocks, bonds or other evidences of indebtedness of corporations, firms or individuals, including banks and trust companies, and to underwrite stocks and bond issues, and do a general financial brokerage business.

(c) To furnish a financial service to banks, trust companies, financial companies, and to other persons, firms or corporations and to receive compensation for such service.

(d) To lend money or to buy bonds, stocks, debentures, notes, bills of exchange, mortgages or any other securities from any person, firm or corporation, and on such terms as may be expedient and in particular from customers or others having dealings with these Trustees, and to lend money upon such securities as to the Trustees may seem proper.

(e) To enter into, make or perform contracts of every kind for any lawful purpose without limit as to amount with any person, firm, association or corporation, town, city, county, state, territory or government.

(f) To buy, own, sell, mortgage, lease and deal in real estate and to build houses or other buildings of every kind and character, either for sale or lease on contract or otherwise.

(g) To purchase or otherwise acquire the whole or any part of the business, property or other assets of any person or company carrying on any business which the Trustees of this trust are authorized to carry on.

ARTICLE III.

1. The Trustees shall be three in number; and they shall hold the legal title to all property at any time belonging to this trust, and, subject only to the specific limitations herein contained, they shall have the absolute control, management, and disposition thereof, and shall likewise have the absolute control of the conduct of all business of the trust; and the following enumeration of specific duties and powers shall not be construed in any way as a limitation upon the general powers intended to be conferred upon them.

(a) The Trustees shall have authority to adopt and use a common seal.

(b) To make all such contracts as they may deem expedient in the conduct of the business of the trust.

(c) From time to time to release, sell, exchange, or otherwise dispose of, at public or private sale, any or all of the trust property, whether real or personal for such prices either in cash or the stocks, shares, or securities of corporations, trusts or associations and upon such terms as to credit or otherwise as they may deem expedient.

(d) To guarantee or assume the obligations of corporation trusts or

associations and to enter into such agreements by way of indemnity or otherwise as they may deem expedient in connection with the acquisition of property from the subscribers as hereinbefore provided for otherwise.

(e) To confer, by way of substitution, such power and authority on the President, Treasurer, Secretary, and other officers and agents appointed by them, as they may deem expedient.

(f) To borrow money for the purposes of the trust and give the obligations of the Trustees therefor.

(g) To loan money from time to time in the hands of the Trustees, with or without security, on such terms as they may deem expedient.

(h) To subscribe for, acquire, own, sell, or otherwise dispose of such real or personal property, including the stocks, shares and securities of any corporation, trust or association as they may deem expedient in connection with the purposes of the trust.

(i) To collect, sue for, receive, and receipt for all sums of money at any time becoming due to said trust.

(j) To employ counsel and to begin, prosecute, defend, and settle suits at law, in equity or otherwise, and to compromise or refer to arbitration any claims in favor of or against the trust.

(k) The Trustees of this trust may from time to time fix the consideration for which any and all shares in this trust shall be sold and the terms upon which the same may be sold and the consideration for such sale. Such consideration may be for labor, services, personal property, real estate or leases thereof, and the judgment of the Trustees as to the value of such labor, services, personal property, real estate or leases thereof, shall be conclusive in the absence of fraud.

(l) And in general to do all such matters and things as in their judgment will promote or advance the business which they are authorized to carry on, although such matters and things may be neither specifically authorized nor incidental to any matters or things specifically authorized.

2. So far as strangers to the trust are concerned, a resolution of the Trustees authorizing a particular act to be done shall be conclusive evidence in favor of strangers, that such act is within the power of the trustees; and no purchaser from the Trustees shall be bound to see to the application of the purchase money or other consideration paid or delivered by or for said purchaser to or for the Trustees.

3. Stated meetings of the Trustees shall be held at least once a month, and other meetings shall be held from time to time upon the call of the President or any two of the Trustees. A majority of the Trustees shall constitute a quorum; and the concurrence of all the Trustees shall not be necessary to the validity of any action taken by them, but the decision expressed by vote of a majority of the Trustees present and voting at any meeting shall be conclusive.

4. The Trustees may make, adopt, amend, or repeal such by-laws, rules, and regulations not inconsistent with the terms of this instrument as they may deem necessary or desirable for the conduct of their business and

for the government of themselves, their agents, servants and representatives.

5. The Trustees shall annually elect from among their number a President, and shall also elect from among their number or otherwise, a Treasurer, a Secretary, and, in their discretion, a Vice-President, and they shall have authority to appoint such other officers, agents and attorneys as they may deem necessary or expedient in the conduct of their business. They shall also have authority to accept resignations and to fill any vacancies in the offices appointed by them, for the unexpired term, and shall likewise have authority to elect temporary officers to serve during the absence or disability of regular officers. They may also by a majority vote of all the Trustees, remove any officer or agent elected or appointed by them.

6. The President, Treasurer, and Secretary shall have the authority and perform the duties usually incident to those offices in the case of corporations, so far as applicable thereto, and shall have such other authority and perform such other duties as may from time to time be determined by the Trustees. The Trustees shall fix the compensation, if any, of all officers and agents whom they may elect or appoint.

7. The Trustees, as a whole, shall be entitled to as compensation for their services in the management of this trust four per cent (4%) of the annual net income and profits derived from the operation of the trust, payable to them annually in January of each year.

8. The Trustees shall cause to be kept by the Secretary elected by them a record of all meetings of the Trustees, which record shall be of the same character and effect as that kept in the case of corporations, and so far as strangers to the trust are concerned, shall be conclusive against the Trustees of the facts and doings therein stated.

9. Any Trustee may acquire, own, and dispose of shares in this trust to the same extent as if he were not a Trustee.

ARTICLE IV.

1. The beneficial interest in this trust shall, in the first instance, be divided into ten thousand (10,000) shares of the par value of one hundred (100) dollars each.

2. As evidence of the ownership of said shares the Trustee shall cause to be issued to each shareholder a negotiable certificate or certificates, to be signed by the President or Vice-President, and attested by the Secretary, which certificates shall be substantially in the form following, to wit:

TRUSTEES' CERTIFICATE.

Number	Shares
.....
Western Financial Company.	

This certifies that is the holder of shares in the capital of the Western Financial Company, subject to a declaration of Trust in favor of said organization, dated April 16, 1927, and recorded in County, State of, and transferable only on the

books of this organization in person or by attorney upon surrender of this certificate properly endorsed.

In Witness Whereof, The said organization has caused this certificate to be signed, and its seal to be hereunto affixed, this day of, A. D. 19....

.....
President of Board of Trustees.

.....
Secretary of Board of Trustees.

(Seal)

3. The shares hereunder shall be transferable by an appropriate instrument in writing and upon the surrender of the certificate therefor, but no such transfer shall be of any effect as regards the trustees until it has been recorded upon the books of the Trustees kept for that purpose.

4. The Trustees shall issue to the subscribers, or their assigns, certificates for said original ten thousand shares, in payment for and as evidence of their ownership of the beneficial interest in the property and cash proposed to be transferred to the Trustees by the subscribers, as hereinbefore stated.

5. In case of the loss or destruction of any certificate for shares the Trustees may, under such conditions as they may deem expedient, issue a new certificate or certificates in place of the one lost or destroyed.

6. The Trustees may from time to time declare and pay dividends out of the net earnings from time to time received by them but the amount of such dividends and the payment of them shall be wholly in the discretion of the Trustees.

7. Shares hereunder shall be personal property, giving only the rights in this instrument, and in the certificates thereof, specifically set forth. The death of a shareholder during the continuance of this trust shall not operate to determine this trust, nor shall it entitle the representatives of the deceased shareholder to an accounting or take any action in the courts or elsewhere against the Trustees; but the executors, administrators, or assigns of any deceased shareholder shall succeed to the rights of the decedent under this trust upon the surrender of the certificate of shares owned by them.

8. The ownership of shares hereunder shall not entitle the shareholders to any title in or to the trust property whatsoever, or right to call for a partition or division of the same, or for an accounting; and no shareholder shall have any other or further rights save as herein expressed.

9. The Trustees shall have no power to bind the shareholders personally, or to call upon them for the payment of any sum of money or any assessment whatever other than such sums as they may at any time personally agree to pay by way of subscription to new shares or otherwise. All persons or corporations extending credit to, contracting with, or having any claim against, the Trustees shall look only to the funds and property of the trust for the payment of any such contract, or claim, or for the payment of any debt, damage, judgment, or decree, or of any money that may other-

wise become due or payable to them from the Trustees, so that none of the shareholders shall be personally liable therefor.

ARTICLE V.

Any Trustee may at any time resign by delivering to the other Trustees in writing his resignation to take effect ten days thereafter, and in every case of the death, resignation or vacancy arising through other cause, the vacancy so occurring shall be filled by the appointment of the successor or successors to be made by the other Trustees, and the term "Trustees" as herein used shall apply to the parties of the second part and their successors thereunder.

ARTICLE VI.

This trust shall continue for the term of twenty-five years, at which time the then Trustees shall proceed to wind up its affairs, liquidate its assets, and distribute the same among the holders of shares hereunder according to their respective rights. For the purpose of winding up the affairs and liquidating the assets of the trust, the then Trustees shall continue in office until such duties shall have been fully performed.

ARTICLE VII.

1. The acceptance of certificates of shares issued hereunder shall constitute the holders thereof parties to this agreement with the same force and effect as if they had signed their names and affixed their seals hereto.
2. This instrument is executed in the State of California and with respect to the laws thereof; and the rights of all parties and the construction and effect of each and every provision hereof shall be construed according to the laws of said state.
3. A duplicate original of this agreement and declaration of trust shall be deposited with or with such depositary as the Trustees may from time to time designate, and the Trustees shall have power at any time to change the depositary with which such duplicate original is deposited.

ARTICLE VIII.

It is intended that this agreement and declaration of trust shall vest absolute control in the Trustees so as to render them personally and individually liable for obligations incurred on behalf of the trust, and to give the cestui que trust the right to share in the profits only, and to exempt the beneficiaries from personal liability, anything to the contrary herein stated notwithstanding.

In Witness Whereof, The several parties hereto have hereunto set their hands and seals, and the Trustees have hereunto set their hands and seals in token of their acceptance of the trust hereby created.

Name of Subscriber.	Amount Subscribed.
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.....
.....

Name of Subscriber.	Amount Subscribed.
.....
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Trustees.	
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§ 249b. Application for Leave to Issue and Sell Securities.

STATE CORPORATION DEPARTMENT OF THE STATE OF CALIFORNIA.

In the matter of the application of the Western Financial Company, organized as a Massachusetts Trust, for leave to issue and sell to the petitioners herein beneficial interest. } Application

To the Honorable Commissioner of Corporations of the State of California.
The application of the Western Financial Company, organized as a Massachusetts Trust, by its subscribers respectively shows:

1. That applicant is a Massachusetts Trust, organized in the state of California, on the day of; 1927; that its principal place of business is in the city of Los Angeles, county of Los Angeles, state of California.
2. That the beneficial interest in said trust is, in the first instance, to be divided into ten thousand (10,000) shares of the par value of one hundred (100) dollars each.
3. That applicant proposes to sell or dispose of its beneficial interest to the signers of this petition in the amounts set opposite their respective names.
4. That no previous sales of beneficial interest in said trust have been made and no brokerage has been paid; and applicant does not intend to pay a brokerage on the sale of said beneficial shares.
5. That a general statement of applicant's business is contained in the Agreement and Declaration of Trust, which is made a part hereof, and marked Exhibit "A."
6. That applicant has not yet commenced business and does not propose to take over any existing business and has no assets, except its unissued beneficial interest, and no liabilities.
7. That the amount of money actually required for the development of the enterprise will be the sum of \$....., which applicant proposes to use as working capital in the purchase and sale of stocks, bonds and other securities, and the payment of expenses of operation.

8. That it is intended that the trustees of said trust agreement shall be
.....,

(a) is a man of experience in the organization and financing of investment companies and has had considerable experience in the sale of listed securities.

(b) is a certified public accountant and has been employed by of Los Angeles and also has had experience in the sale of listed securities.

(c) is a statistician and accountant and has had considerable experience in his line, in addition to the experience he has lately had in the sale of listed securities.

9. That these trustees have worked out a general plan or scheme to assist the prospective investor in learning the financial condition of the trust, in which he proposes to invest, and by it they will be able to protect the proposed investor in his investment.

Wherefore, applicant respectfully requests that a permit be issued to it, to sell beneficial interests in its capital stock as herein above set forth.

WESTERN FINANCIAL COMPANY

By

Name of Subscriber.	Amount Subscribed.
.....
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.....
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Trustees.
.....
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.....

State of California, County of Los Angeles, ss.

....., being first duly sworn, depose and say: That they are the subscribers to the attached Massachusetts Trust and the signers of the foregoing petition; that they have read the same and know the contents thereof; that the same are true of their own knowledge, except as to the matters which are therein stated

upon their information or belief, and as to those matters they believe it to be true.

Subscribed and sworn to before me this day of
May, 1927.

.....
Notary Public in and for the County
of Los Angeles, State of California.

CHAPTER XXII.

NON-PAR VALUE STOCK.

- § 250. Corporate Stock Without Par Value—In General.
- § 251. Advantages in Having Shares Without Par Value.
- § 252. Issuance of Corporate Stock Without Par Value.
- § 253. Change From Stock With Par Value to Stock Having No Par Value.
- § 254. Resolution Changing Shares From Par Value to Shares Without Par Value.
- § 255. Admission of Foreign Corporations Into State.
- § 256. Franchise Taxes and Fees.
- § 257. Liability of Shareholders of Stock Without Par Value.
- § 258. Synopsis of Non-Par Value Laws—Alabama.
- § 259. Same—Alaska.
- § 260. Same—Arizona.
- § 261. Same—Arkansas.
- § 262. Same—California.
- § 263. Same—Colorado.
- § 264. Same—Connecticut.
- § 265. Same—Delaware.
- § 266. Same—Florida.
- § 267. Same—Georgia.
- § 268. Same—Idaho.
- § 269. Same—Illinois.
- § 270. Same—Indiana.
- § 271. Same—Kansas.
- § 272. Same—Louisiana.
- § 273. Same—Maine.
- § 274. Same—Maryland.
- § 275. Same—Massachusetts.
- § 276. Same—Michigan.
- § 277. Same—Minnesota.
- § 278. Same—Missouri.
- § 279. Same—Nevada.
- § 280. Same—New Hampshire.
- § 281. Same—New Jersey.
- § 282. Same—New Mexico.
- § 283. Same—New York.
- § 284. Same—North Carolina.
- § 285. Same—Ohio.
- § 286. Same—Oregon.
- § 287. Same—Pennsylvania.
- § 288. Same—Rhode Island.
- § 289. Same—Tennessee.
- § 290. Same—Texas.

- § 291. Same—Utah.
- § 292. Same—Vermont.
- § 293. Same—Virginia.
- § 294. Same—Washington.
- § 295. Same—West Virginia.
- § 296. Same—Wisconsin.
- § 297. Clause Providing for Stock Without Par Value.
- § 298. Clause Providing for Common and Preferred Stock Without Par Value.
- § 299. Clause Providing for Common and Preferred Stock, Common Without Par Value.

§ 250. Corporate Stock Without Par Value—In General.¹—

Statutes in a majority of the states provide for the organization of corporations with non-par value stock. New York was the first state to pass an act permitting the issuance of such stock. While the law was enacted in 1912, it did not attract very much attention until 1915, when a great many lawyers, bankers and underwriters began to recommend the organization and reorganization of corporations under its provisions. The theory of non-par value is that shares are merely an evidence of pro rata interest in capital and earnings whatever the same may be and not in any way a measure thereof and therefore that these two fundamentally different things shall not be tied together by a fixed relationship.

The principal object in permitting the authorization of shares without par value is to deprive the promoters of corporations of the advantage of inflated capitalization and to focus the attention of the investing public upon the real value of the shares. The sponsors of these laws have sought to have the truth recognized that a share of stock represents merely a certain aliquot part of the net assets of the corporation in excess of its liabilities, and whether the corporation issues stock with or without par value, the interest of the holder in respect of earnings and assets is the same. When the stock has no par value, the investor is placed on notice, and it is necessary for him to inform himself as to the value of the company's assets and the amount of its earnings. As one non-par value statute states, "The intent and purpose of this act is to require a share of stock to be treated and represented, subject to lawful rights, privileges, limitations and restrictions,

¹ See "Shares Without Par Value" by the Corporation Trust Company, with offices at 120 Broadway, New York.

as a mere evidence of an aliquot part or divisional interest in the assets and earnings of the corporation issuing the same whatever the extent or value of such assets or earnings may be, to the end that misrepresentation or misunderstanding arising through the difference between actual value of a share of stock and the value appearing on the face of the certificate therefor may be eliminated." 'The aim is also to eliminate the danger of stockholders' liability when stock is issued at the market value or for consideration, which, although recognized as valid and proper, might, if par value stock were issued, still leave the matter as to sufficiency involved in doubt.²

§ 251. Advantages in Having Shares Without Par Value.—

It is not an uncommon practice in organizing corporations having shares with par value, to place such a monetary valuation on properties to be acquired through stock issues, that it seems almost apparent that the properties have been grossly overvalued. In cases of this sort, counsel's reliance is placed upon the statutory provision common in many states to the effect that the judgment of the board of directors as to the valuation placed upon property turned in as payment for stock, is conclusive in the absence of actual fraud in the transaction. The decisions of various courts on the question, however, have impressed counsel with the importance of requiring directors to act within reasonable limits in arriving at values of this nature. Where a patent or mine, or other property of more or less uncertain value and possibilities is arbitrarily valued by directors at a substantial sum in order to dispose of the question of stock liability, there are still grave legal doubts that their appraisal will stand the test of judicial scrutiny. Considerations of this kind led naturally to the authorization of stock without par value, which provides a safe and effective means of making shares full paid. Even where there is no question as to the sufficiency of the consideration, there are other advantages as pointed out hereinafter in having shares without par value. Furthermore, a corporation in such case, with assets equal to its authorized capital at the time of organization would be under no disability if it had shares without par value, and in case of depreciation in the

² Article on "Shares Without Par Value" by the Corporation Trust Company.

value of the assets a prospective investor would not be misled by the dollar mark attached to the shares. In the event of appreciation in the value of the assets of the corporation, the share of stock without par value finds its proper price level as does any other species of property. With the dollar mark removed, the representation to the purchaser and the public is that the share entitled the holder to a proportionate interest in the assets and earnings and reference must be made to the books to determine its value. In this connection it is interesting to note that the title of one of the non-par statutes reads, "An act to prevent corporation stock watering and fraudulent practices and to regulate the securities and capitalization of stock corporations by providing for the issue of shares of stock having no par or face value." It is becoming more and more apparent that bankers and investors pay little, if any, attention to the question of the nominal capital of a corporation or the par value of its stock when matters of credit or investments are considered. Values are placed upon management, actual assets and earning power. No advantage is gained through representations as to nominal capital or the par value of a security, except with the uninformed public which should be protected.

Corporation officials generally are opposed to carrying fictitious values in their balance sheets representing appraisals of good will, patents, and the like so that non-par value stock will encourage this laudable conservatism and will, to a large extent and in an effective way without delaying and embarrassing legitimate enterprises, carry out the purpose of the so-called "Blue Sky Laws." Varying conditions make it necessary for the active corporation, from time to time, to issue additional stock, and it is by no means generally the case that the assets and earnings will warrant an offering of new stock at par. With outstanding stock \$100 per share, assets may very well represent a smaller or greater proportionate value. In some cases, arising through depletion of assets or business reverses, it becomes necessary to make concessions in the terms of an offering from that of the original or previous issues. In both instances the psychology of the average investor plays an important part. A large proportion do not favor high price securities as they have the impression that they are paying a premium for them. The number of shares purchasable for a given amount is also a factor. On the other hand, where stock with a par value

is offered at less than par, the impression upon the public is likely to be unfavorable in respect of the merits of the security. It is apparent that these views cannot obtain with respect to non-par value stock. The difficulties in the way of financing in the usual course through stock sales subsequent to incorporation and initial issue are even more apparent when preferred stock is considered. The dividend rate for an issue of preferred stock is fixed at the time of the creation of the issue and is inflexible, whereas the cost of money and actual dividend demanded by the investor per \$1.00 investment in preferred stock is constantly changing. A six per cent preferred stock will not sell for par value under today's conditions, and yet the par value statutes require this to be done even though prior obligations such as bonds and notes may be sold at a discount. The result is that many corporations must of necessity finance under adverse market conditions through sale of fixed interest bonded obligations and oftentimes with disastrous results. A share of stock cannot be sold for \$100 per share under all conditions any more than a bushel of wheat—whether good or bad—can be sold at all times for \$2.00. Consequently the statute which requires that a share of stock shall not contain any representation as to value and then permits it to be sold at a fair price as fixed by the stockholders or by the directors acting pursuant to proper authority, merely recognizes the sound economics of the situation.

§ 252. Issuance of Corporate Stock Without Par Value.—

In some of the states it is provided that any corporation may issue shares of stock, either common or preferred, without any nominal or par value.³ Some of them except banks, trust companies, building and loan associations, and insurance companies,⁴ and other moneyed corporations.⁵ The Delaware statute provides that any corporation may issue one or more classes of stock without any nominal or par value with such designations, preferences, and restrictions, if any, and voting powers or restrictions or qualifications thereof, as shall be stated in the certificate of incorporation

³ Alabama Code of 1923, sec. 7009.

⁴ Minnesota Laws of 1925, chapter 333.

⁵ New York Stock Corporation Law, secs. 12 and 36. See synopsis of nonpar value laws of other states following in this chapter.

or any amendment thereof.⁶ In California, however, corporations are required by constitutional provisions to have their capitalization represented in shares of a single par value, and under such provisions it has been held that a corporation cannot have both par value and non-par value stock.⁷ An entire issue of non-par value stock, however, is authorized.⁸

A statute authorizing the creation of a corporation, requiring the total amount of capital stock, the number of shares, and the par value thereof, together with the amount of capital actually paid up and the classes of shares into which stock is divided, to be stated in the certificate of incorporation, provided that corporations might be formed with no par value shares, in which case, in lieu of the foregoing provisions, certain things should be stated, does not authorize the formation of a corporation having shares of capital stock both with and without par value.⁹

§ 253. Change From Stock With Par Value to Stock Having No Par Value.—A non-assessing stockholder cannot attack a change of stock from stated to non-par value, which is duly adopted by a two-thirds vote in value of outstanding stock, in compliance with statutory authority.¹⁰ Nor can exception be taken by a minority of the stockholders to a plan for the amendment of the charter, so as to permit, as authorized by a statute enacted subsequent to the formation of the corporation, the issuance of stock of non-par value, deemed necessary by the directors for raising money for financing the concern, on the ground that the issuance of stock, which was to be without voting power and entitled to dividends only after the payment of dividends on the original stock, would change the fundamental arrangement of the corporation in such a manner as to violate their constitutional rights.¹¹ Nor is a constitutional provision that stock shall be issued only for money, labor done, or property actually received, violated

⁶ Delaware General Corporation Law, sec. 4-A, as amended by chapter 112, Laws of 1925.

⁷ *Del Monte Light & Power Co. v. Jordan*, 196 Cal. 488, 238 Pac. 710.

⁸ *Land Development Co. v. Jordan*, 198 Cal. 346, 245 Pac. 187.

⁹ *State ex rel. Goodman v. Greathouse*, 47 Nev. 198, 217 Pac. 957.

¹⁰ *Randle v. Winona Coal Co.*, 206 Ala. 254, 19 A. L. R. 118, 89 So. 790.

¹¹ *Grausman v. Porta Rican-American Tobacco Co.*, 95 N. J. Eq. 155, 121 Atl. 895.

by permitting shares of corporate stock to be changed from a stated to a non-par value.¹² So, it has been held that, the provision of a general corporation law empowering any corporation created thereby to amend its charter from time to time by the addition or diminution of corporate powers and purposes, or by any other change or alteration such as would be lawful and proper in an original certificate of incorporation at the time of the making of the amendment, is broad enough to permit an amendment to a charter of a corporation authorizing the issuance of non-par value stock, the right to issue said stock being given by statute.¹³

§ 254. Resolution Changing Shares From Par Value to Shares Without Par Value.

RESOLVED, That the Board of Directors of, a corporation of the State of, deems it advisable, and hereby declares it to be advisable:

That the common stock of the said Company, consisting of shares, of the par value of \$...... each, be changed into common stock without nominal or par value, consisting of shares, such common stock without par value, to be subject to the prior rights and privileges of the preferred stock as the same now exist.

That such change of common stock with par value into common stock without nominal or par value be effected by changing each share of common stock with par value into shares of common stock without nominal or par value.

That the shares of such common stock without nominal or par value, which upon the making of such change will be unissued, may from time to time be issued and sold by the Company in such manner and for such consideration as from time to time may be fixed by its Board of Directors.

That Article of the Certificate of Incorporation of the Company be amended, changed and altered to read as follows:

..... The amount of the total authorized capital stock of the corporation is shares, of which are to be preferred stock of the par value of each, and the remaining shares are to be common stock without nominal or par value. The holders of such preferred shares shall be entitled to receive, and the Company shall be bound to pay thereon, cumulative dividends at the rate of

¹² Randle v. Winona Coal Co., 206 Ala. 254, 19 A. L. R. 118, 89 So. 790.

¹³ Peters v. United States Mortgage Co., 13 Del. Ch. 11, 114 Atl. 598. See, also, People ex rel. Recess Exporting & Importing Co. v. Hugo, 191 App. Div. 628, 182 N. Y. Supp. 9.

..... per cent. per annum, payable in the months of, and no dividends shall be declared or paid on the common stock until all said dividends upon the preferred shares shall be paid or accumulated and set aside for each then previous quarter year of the existence of the corporation. All dividends made in excess of said per cent. per annum upon the preferred shares shall be paid upon the common shares. In case of the dissolution of the corporation in any manner the surplus assets after payment of debts shall first be paid to the holders of the preferred shares to the extent of the par value thereof, and the remainder of the assets shall be divided among the holders of the common shares. Any unissued shares of common stock without par value may be issued and sold by the Company in such manner and for such consideration as from time to time may be fixed by its Board of Directors.

BE IT FURTHER RESOLVED, That the foregoing matters, including such proposed amendments, changes or alterations in the Certificate of Incorporation of the Company, shall be submitted for action thereon by the stockholders of the Company at meeting thereof to be held on, the day of, 19...., at o'clock, and that notice of the time, place and purposes of such meeting, including the taking of action upon the foregoing matters, shall be given in accordance with the requirements of the by-laws of the Company.

§ 255. Admission of Foreign Corporations Into State.—

Under principles of comity, and except as otherwise provided by constitutional or statutory provisions, a corporation created by any state or nation is permitted to enter other states, and there to exercise all legitimate powers conferred upon it and to carry on as a corporation any business not prohibited by the local laws or against local public policy.¹⁴ The fact that a foreign corporation seeking to do business within a state is organized under the laws of another state, with shares of stock that have no par value, does not preclude its admission into the former state the laws of which do not provide for such shares of stock, where the corporation seeking to do business complies with all other requirements fixed by the laws of the former state.¹⁵ This is so notwithstanding it is declared by statute in such state that, "if it shall appear such

¹⁴ Commonwealth Acceptance Corp. v. Jordan, 198 Cal. 618, 246 Pac. 796.

¹⁵ North American Petroleum Co. v. Hopkins, 105 Kan. 161, 181 Pac. 625; State ex rel. Standard Tank Car Co. v. Sullivan, 282 Mo. 261, 221 S. W. 728; Commonwealth Acceptance Corp. v. Jordan, 198 Cal. 618, 246 Pac. 796.

company or corporation could not organize under the laws of this state, license shall be refused.”¹⁶

§ 256. **Franchise Taxes and Fees.**—For the purpose of taxes prescribed to be paid on the filing of any certificate or other paper relating to corporations and of franchise taxes, it is sometimes provided by statute that shares having no par value shall be taken to be of the par value of \$100.¹⁷ It has been held that such provision does not violate the constitutional provision that a tax with respect to corporations owning or using franchises and privileges shall “be uniform as to the class upon which it operates.”¹⁸ However, provisions of a statute of the state of incorporation of a non-par value stock corporation, requiring, for the purposes of taxation, that shares of stock in such corporation be taken at a specified par value, are not applicable where the question is of the basis of fixing a franchise tax for the privilege of doing business in another state.¹⁹ A statute imposing a fee for any increase in the capital stock of a corporation does not impose a fee for changing the capital stock from stock having a par value to an equal number of shares having no par value.²⁰

§ 257. **Liability of Shareholders of Stock Without Par Value.**—Although non-par value stock corporations have no nominal value, that is, no dollar mark, stated on the face of their stock certificates, yet the general rules regarding the liabilities of the subscribers for non-payment of the full amount of their subscriptions, and the general rules regarding the declaration of divi-

¹⁶ *State ex rel. Standard Tank Car Co. v. Sullivan*, 282 Mo. 261, 221 S. W. 728.

¹⁷ *Randle v. Winona Coal Co.*, 206 Ala. 254, 19 A. L. R. 118, 89 So. 790; *Detroit Mortgage Corp. v. Secretary of State*, 211 Mich. 320, 178 N. W. 697, 182 N. W. 526.

¹⁸ *Roberts & Schaefer Co. v. Emmerson*, 313 Ill. 137, 144 N. E. 818. Compare *People ex rel. Terminal & T. Taxi Corp. v. Walsh*, 202 App. Div. 651, 195 N. Y. Supp. 184.

¹⁹ *Staples v. Kirby Petroleum Co. (Tex. Civ. App.)*, 250 S. W. 293; *American Refining Co. v. Staples (Tex. Civ. App.)*, 260 S. W. 614. See *Detroit Mortgage Corp. v. Secretary of State*, 211 Mich. 320, 178 N. W. 697, 182 N. W. 526, where a different conclusion was reached.

²⁰ *Olympia Theaters v. Commonwealth*, 238 Mass. 374, 131 N. E. 204; *Hood Rubber Co. v. Commonwealth*, 238 Mass. 369, 131 N. E. 201.

dends, apply as in the case of par value corporations, the liability of the shareholder depending upon whether he has paid or delivered the amount in money, or its equivalent, for the stock that was sold, while the capital stock of a non-par value corporation cannot be lawfully invaded by the declaration of dividends, any more than the capital stock of a par value stock corporation.¹ It has been held that no par value stock issued for an option on property taken over by the corporation, which is the only consideration contemplated by the corporation for its issuance, is not subject to assessment upon the bankruptcy of the corporation, where the statute provides that liability on such stock shall be limited to the unpaid balance of the consideration for which it is issued.²

§ 258. Synopsis of Non-Par Value Laws—Alabama.—Any corporation may issue shares of stock, either common or preferred, without any nominal or par value.

A certificate of incorporation or any amendment thereof, may provide that such stock shall be divided into different classes with such preferences, designations and voting powers or restrictions or qualifications thereof as shall be stated therein.

Such stock without par value may be issued by the board of directors from time to time for such consideration as may be fixed from time to time by the board of directors, pursuant to authority conferred in the certificate of incorporation or if such authority is not so conferred, then pursuant to authority of the holders of two-thirds of the voting stock given at a meeting called for the purpose.

The amount of capital stock with which the corporation will begin business shall not be less than \$1,000.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For tax purposes, non-par value shares are held to have a par value of \$100 each, unless it be shown to the satisfaction of the officer with whom a certificate or franchise tax report should be filed that such shares are of a different value than \$100, in which event such shares shall be taken to be of a par value equivalent to such different value as so shown.³

¹ American Refining Co. v. Staples (Tex. Civ. App.), 260 S. W. 614.

² Johnson v. Louisville Trust Co., 293 Fed. 857.

³ Code of 1923, secs. 7009-7013.

§ 259. **Same—Alaska.**—Any corporation may, if so provided in its articles of incorporation or in an amendment thereof, issue shares of stock (other than stock preferred as to dividends or preferred as to its distributive share of the assets of the corporation or subject to redemption at a fixed price) without any nominal or par value.

Every share of such stock without nominal or par value shall be equal to every other share of such stock, except that the articles of incorporation may provide that such stock shall be divided into different classes with such designations and voting powers or restriction or qualification thereof as shall be stated therein, but all such stock shall be subordinate to the preferences given to preferred stock, if any.

Such stock may be issued from time to time for such consideration as may be fixed from time to time by the board of directors thereof, pursuant to authority conferred in the articles of incorporation, or if such articles shall not so provide, then by the consent of the holders of two-thirds of each class of stock then outstanding and entitled to vote, given at a meeting called for that purpose.

There is no provision in the act requiring a corporation to set forth an amount of capital with which it will carry on business.

There is no provision making directors liable for debts until a designated amount of capital has been paid in.

The fee for filing articles of incorporation is \$25 regardless of whether the shares are with or without par value.⁴

§ 260. **Same—Arizona.**—Provision may be made for the issuance of one or more classes of stock without any nominal or par value of such number of shares, with such designations and preferences, if any, as shall be stated in the articles of incorporation or in any amendment thereto.

A corporation having shares without par value may issue and sell such shares from time to time for such consideration as is prescribed in the articles of incorporation or in any amendment thereto.

The highest amount of indebtedness or liability direct or contingent to which the corporation may at any time subject itself, shall

⁴ Laws of 1923, chapter 73.

be computed by rules and regulations of the Corporation Commission.

The law does not require a corporation to set forth an amount of capital with which it will carry on business.

No provision is made that directors shall be liable for debts until a designated amount of capital has been paid in.

No provision is made providing for the payment of a fee on the number of shares authorized. All corporations, irrespective of the amount of authorized capital, pay the same fee under the Arizona law.⁵

§ 261. Same—Arkansas.—Provision may be made in the charter, certificate of reorganization, merger or consolidation agreement, or certificate of amendment, for the issue of shares of preferred or common stock or both, without nominal or par value.

Such shares without par value may be issued for such consideration as may be prescribed in the charter, certificate of reorganization, etc., or if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for the purpose, or by the board of directors when acting under general or special authority granted by the stockholders or under general authority conferred by the charter, certificate of reorganization, etc.; such consideration in all cases to be in the form of money paid, labor done, or property actually received.

Within 90 days after the issue of shares without par value the corporation shall file with the county clerk of the county in which it has its principal place of business, and with the Secretary of State, a certificate setting forth the number of such shares so issued and the actual value received by the corporation for such shares.

The amount of capital with which the corporation will begin business must be stated in the charter.

The act contains no provision making the directors liable for debts until a designated amount of capital has been paid in.⁶

For the purpose of taxes or fees to be paid on the filing of any certificate or paper relating to corporations and of franchise taxes

⁵ Chapter 29, Laws of 1922, as amended by chapter 4, Laws of 1923.

⁶ Laws of 1923, Act No. 247.

to be paid to the state, such shares shall be taken to be the par value of \$25 each.⁷

§ 262. Same—California.—Any corporation may, if so provided in its articles of incorporation or in any amendment thereof, issue shares of stock (other than stock preferred as to dividends or as to assets) without any nominal or par value. In case of any such corporation having capital stock with par value and capital stock without par value, no distinction shall be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation.⁸

Subject to laws creating and defining the duties of the commissioner of corporations and of the railroad commission, such corporation may issue and sell its authorized shares without par value for such consideration as may be prescribed in the articles of incorporation, or for such consideration as shall be the fair market value of such shares, and in the absence of fraud in the transaction the judgment of the board of directors as to such value shall be conclusive; or for such consideration as from time to time may be fixed by the board of directors pursuant to authority conferred in such articles of incorporation; or for such consideration as shall be consented to or approved by the holders of a majority of shares then outstanding at any meeting called in the manner prescribed by the by-laws, provided the call for such meeting shall contain notice of such purpose.

The amount of stated capital with which the corporation will begin business shall not be less than \$500; and the amount of stated capital with which the corporation will carry on business shall be either

(1) not less than the aggregate amount of the preference to which all issued and outstanding stock having a preference as to principal is entitled, and in addition thereto an amount stated in respect to every share of stock issued and outstanding other than stock having a preference as to principal, which amount shall not be less than \$5 for each share, and such additional amount as from

⁷ Laws of 1923, Act No. 367.

⁸ A corporation cannot have both par value and noper value stock. See *Del Monte Light & Power Co. v. Jordan*, 196 Cal. 488, 238 Pac. 710.

time to time may by resolution of the board of directors be transferred thereto; or

(2) the aggregate of the amounts received by it as consideration for the issuance of its shares without par value, the aggregate par value of all issued and outstanding shares, if any, having a par value, and such additional amounts as from time to time may by resolution of the board of directors be transferred thereto.

Until the amount of capital with which it will begin business, as stated in its articles of incorporation or in its articles of incorporation as amended, shall have been fully paid in, no corporation authorized to issue shares with no nominal or par value shall begin business or incur any debts in excess of the amount of stated capital paid in at the time such debts are contracted.

The directors assenting to the creation of any debt in violation of the foregoing are liable jointly and severally for the debts of the corporation.

For the purpose of fixing the original tax for filing articles of incorporation, shares without par value shall be deemed to have a par value of \$100.⁹

The annual license tax is \$100 if all the shares have no par value. If part of the shares have par value, the tax is computed on the par value stock in accordance with the schedule of fees to be paid by companies having shares with par value, to which sum shall be added \$50.¹⁰

§ 263. Same—Colorado.—Any corporation may issue shares of stock (other than stock preferred as to dividends or preferred as to its distributive share of the assets of the company or subject to redemption at a fixed price) without any nomination or par value.

Such stock may be issued by the corporation from time to time for such consideration, in labor done, services performed or money or property actually received, as may be determined from time to time by the board of directors unless otherwise provided in the certificate of incorporation or an amendment thereof.

The act does not require an amount of capital with which the corporation will carry on business, to be stated in the certificate of incorporation.

⁹ Sec. 290b et seq., added in 1923, chapter 293.

¹⁰ Laws of 1917, chapter 215; Henning's General Laws, 3 ed., p. 436.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of determining the fee to be paid upon filing the certificate of incorporation, and the license tax, but for no other purpose, shares without par value shall be deemed to be of the par value of \$1 each.¹¹

§ 264. Same — Connecticut.—Any corporation incorporated under the General Corporation Act may provide for one or more classes of stock without any nominal or par value, with such preferences, voting powers, restrictions and qualifications thereof as shall be expressed in its certificate of incorporation or any amendment to the same or agreement of consolidation.

Stock without par value, preferred as to dividends or as to its distributive share of the assets of the corporation upon dissolution, may be made subject to redemption at such times and prices as may be provided in the certificate of incorporation or amendment thereto or agreement of consolidation. In the case of stock without par value preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the certificate of incorporation or amendment thereto or agreement of consolidation.

Subject to any limitations and restrictions set forth in the certificate of incorporation, any such corporation may, at any meeting warned and held for that purpose, empower the directors to issue shares of its unissued authorized capital stock without par value and may authorize its directors to fix the amount of money or the actual value of the consideration for which such stock shall be issued, provided the certificate of incorporation or any amendment thereto or agreement of consolidation may empower the directors to issue, from time to time shares of such stock without par value for such consideration as the directors may deem advisable, subject to such limitations and restrictions as may be set forth therein.

The act authorizing the issuance of shares without par value does not refer to a stated capital but it is provided elsewhere that the amount of capital stock with which a corporation shall commence business, which shall not be less than \$1,000, shall be stated

¹¹ Comp. Laws 1921, sec. 2248.

in the certificate of incorporation and no such corporation shall commence business until the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business has been paid in. (The secretary of state has held that no-par-value companies must begin business with not less than \$2,000 in order to cover provisions of statute requiring par-value companies to have an authorized capital stock of not less than \$2,000.)

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of the organization tax shares without par value shall be presumed to be of the par value of \$100.¹²

§ 265. Same—Delaware.—Any corporation may issue one or more classes of stock without any nominal or par value with such designations, preferences, and restrictions, if any, and voting powers or restrictions or qualifications thereof, as shall be stated in the certificate of incorporation or any amendment thereof.

Preferred stock without par value, if desired, may be made subject to redemption, may be given preferences as to assets upon dissolution or winding up of the corporation, may be given the right to receive cumulative or non-cumulative dividends payable as a whole or in part before any dividend shall be set apart or paid on the common stock, may be authorized to be issued in more than one series of the same class, each series carrying the same or different rates of dividends, may be given full, qualified or no voting rights, may be made convertible into shares of other classes of preferred or common stock with or without par value, and may have such other preferences, designations, etc., all as shall be stated in the certificate of incorporation or in an amendment thereof.

Such stock may be issued from time to time for such consideration as may be fixed from time to time by the board of directors, pursuant to authority conferred in the certificate of incorporation or an amendment thereof or, if such certificate or amendment shall not so provide, then by consent of the holders of two-thirds of each class of stock outstanding and entitled to vote, given at a meeting called for the purpose.

¹² Laws of 1923, chapter 168.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For tax purposes, non-par value shares are held to have a par value of \$100 each.¹³

§ 266. Same — Florida.—Any corporation may issue shares without par value. The certificate of incorporation shall show the maximum number of shares with par value and the maximum number of shares without par value that the corporation is authorized to have outstanding at any time, the classes, with the distinguishing characteristics of each, if any, into which the same are divided, and the par value of shares other than those which it is stated are to have no par value.

Corporations may issue their authorized shares without par value for such consideration as may be prescribed in the certificate of incorporation or in any amendment thereof or if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly convened and held or by the board of directors when acting under general or special authority granted by the stockholders or conferred by the certificate of incorporation or an amendment thereof.

The amount of capital with which the corporation will begin business, which shall not be less than \$500, must be stated in the certificate of incorporation.

No corporation shall commence business until the amount of capital so specified has been paid in. If any corporation violates this provision, its directors shall be personally liable for the debts of the corporation to the extent of the amount of capital so specified.

The organization tax on shares without par value is 20 cents for each share authorized up to and including 1250 shares, 5 cents for each share in excess of 1250 and not in excess of 10,000 shares, $\frac{1}{4}$ of 1 cent for each share in excess of 10,000 and not in excess of 20,000 shares and $\frac{1}{10}$ of 1 cent for each share in excess of 20,000 shares. In no case shall the tax be less than \$10.¹⁴

¹³ Section 4-A, General Corporation Law, as amended by chapter 112, Laws of 1925.

¹⁴ Laws of 1925, chapter 10096.

§ 267. **Same—Georgia.**—Any corporation, except an insurance, banking or trust company, may, upon its organization or thereafter in the manner provided, create shares of stock with or without par value.

A corporation may issue its shares without par value for such consideration as may be prescribed in its charter or certificate of incorporation or amendments thereof; or, if there be no provisions therein with respect thereto, then for such consideration as may be fixed by the stockholders at a meeting duly called for that purpose, or by the board of directors when acting under general or special authority granted by the stockholders, or under general authority conferred by the charter or certificate of incorporation or amendments thereof.

Before any such corporation can begin business there must be at least \$1,000 paid in for such non-par-value common stock either in cash or in tangible assets at their fairly appraised valuation.

There is no provision in the act making the directors liable for corporate debts until such amount of capital has been paid in, but it is provided elsewhere that persons who organize a company and transact business in its name, before the minimum capital stock has been subscribed for, are liable to creditors to make good the minimum capital stock with interest.

No provision is made for determining the annual license tax in case of shares without par value.¹⁵

§ 268. **Same—Idaho.**—Any stock corporation, other than banking corporations, may provide for the issuance of shares of capital stock of any one or more classes, whether preferred or common, having no par or face value.

Such shares without par value may be issued or disposed of for such consideration as may be prescribed in the articles of incorporation or reorganization or agreement of merger or consolidation papers, or in the articles of amendment, or, if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for the purpose, or by the board of directors when acting under general or special authority granted by the stockholders.

¹⁵ Senate Bill 6, Laws of 1925.

The amount of actual capital with which the corporation will begin business must be set forth in the articles of incorporation.

No corporation having shares without par value shall begin business or incur any indebtedness until the full amount of its stated capital shall have been paid in.

For the purpose of any statutory provision imposing a tax or license or filing fee with respect to outstanding capital stock or limiting the amount of capital stock which a corporation may have, or the relation between indebtedness and capital stock or prescribing the portion or amount or par value of stock or capital which must be paid in cash or otherwise, at any time or from time to time, or fixing individual liability on amount of stock owned, the "shares capital" of a corporation having non-par value shares shall be deemed to be its capital stock.

The "shares capital" of a corporation shall be the actual excess as shown by the books of the corporation of its assets over and above its liabilities, other than liabilities on account of stock issued or to be issued by such corporation and in case of a corporation having outstanding shares with a par or face value as well as shares with no par or face value, the portion of "shares capital" applicable to the shares with no par or face value shall be the excess of "shares capital" over and above the total par value of outstanding shares having a par or face value.¹⁶

§ 269. Same—Illinois.—Any or all of the shares of stock of a corporation may be without par value. The statement of incorporation shall set forth the number of shares and indicate whether all or part of them shall be without par value and if there is to be more than one class of stock created, a description of the different classes, the number of shares in each class and the relative rights, interests and preferences each class shall represent.

The corporation may issue and sell its shares without par value for such consideration not less than \$5 nor more than \$100 per share as may be prescribed in the certificate of incorporation or as from

¹⁶ Laws of 1921, chapter 205. With regard to the initial filing fee and the annual franchise tax the attorney general of the state has given the secretary of state an opinion to the effect that whenever a corporation has stock of non-par value, the secretary must collect the maximum fees.

time to time may be fixed by the board of directors pursuant to authority conferred in the certificate of incorporation.

The statement of incorporation must set forth the amount of stock which it is proposed to issue at once (which shall not be less than \$1,000, all of which must be subscribed), and the payment of at least one-half of the capital stock which it is proposed to issue at once, with a description of the nature and value of property, if any, paid for such capital stock.

Directors are liable for all debts in excess of the amount of the capital of the corporation. In the case of a company having shares without par value, it is probable that this provision of law would apply in so far as the indebtedness is in excess of the amount recognized and received as the consideration for the non-par value shares.

For tax purposes, shares without par value are held to have a par value of \$100 each.¹⁷

§ 270. Same—Indiana.—Any corporation (except banks, trust companies, insurance companies, surety and casualty companies) may provide in its articles of incorporation for the issuance of common stock of no par value.

Any corporation (except banks, trust companies, insurance, surety and casualty companies), on thirty days' written notice to its stockholders, at a special meeting called for that purpose, or at any annual meeting, may, by a two-thirds vote of all its outstanding common stock, amend its articles of incorporation by providing for the issuance of shares of no par value or may change all or any portion of its outstanding common stock from shares having a par value into shares having no par value, by filing within thirty days thereafter a certified copy of such proceedings in the office of the secretary of state and in the office of the recorder of the county where such corporation has its principal place of business.

The act does not prescribe the consideration for which shares without par value may be issued.

There is no provision in the act requiring a corporation to set forth an amount of capital with which it will carry on business.

¹⁷ Chapter 32, Revised Statutes 1921, secs. 4, 32, 96, and 105, as amended by Senate Bill 400, Laws of 1923.

There is no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of estimating the fees required to be paid into the office of the secretary of state on the filing of original articles of incorporation, or any amendment of the articles of any corporation, which provide that all or any portion of the shares of the common stock shall have no par value, and also for the purpose of determining the proportion of preferred stock to be issued by any such corporation authorized to issue preferred stock, the shares designated as having no par value shall be considered and estimated to have a par value of \$100 each.¹⁸

§ 271. Same — Kansas.—Any stock corporation, other than building and loan associations, trust companies and corporations authorized by law to transact the business of banking or insurance, may provide for the issue of shares of preferred stock of any or all classes or common stock of any class, or both preferred and common stock, without any nominal or par value.

Preferences, rights, limitations, privileges and restrictions may be stated in dollars or cents per share, in respect to shares without par value.

Such shares without par value may be issued and disposed of from time to time for such consideration as may be prescribed or authorized in the articles of association or certificate of incorporation, or if not so prescribed, then for such consideration as may be fixed by the stockholders of the corporation at any annual meeting thereof or at any special meeting thereof, duly called and held, or by the board of directors acting under authority of such stockholders, given in like manner.

The law requires the corporation to set forth in its certificate of incorporation the amount of capital with which it will begin business, and no indebtedness shall be incurred until this amount shall have been fully paid in.

For the purpose of computing any capitalization or other statutory fee; or any tax or taxes, the determination of which is based on the par value of shares of stock, and for the purpose of any statutory provision limiting the relation between indebtedness and capital stock, each share of stock without nominal or par value

¹⁸ Laws of 1923, chapter 28.

may be considered the equivalent to a share having a nominal or par value of One Hundred Dollars; or, the actual value of such stock, or any other basis may be adopted which will justly carry out the provisions of the statutes in this state; and the Charter Board or any board or commission or officer having jurisdiction in the premises, may require such further statements of fact as may be reasonable and pertinent to the inquiry.¹⁹

§ 272. **Same—Louisiana.**—Upon the organization of any stock corporation (except banking and insurance companies and home-stead and building and loan associations) or upon consolidation of two or more such corporations, or upon amendment of the articles of incorporation or consolidation, provision may be made for the issuance of shares of stock without par value. Such shares may be divided into different classes, the shares of each class to have such preference, designation, rights, privileges, and voting powers, and to be subject to such restrictions, limitations and qualifications with respect to voting and otherwise, as shall be stated in the articles of incorporation or of consolidation or amendment thereof.

A corporation may issue and dispose of its authorized shares having no par value for such consideration as may be prescribed in the articles of incorporation or of consolidation or any amendment thereof; or, if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for the purpose or by the board of directors when acting under general or special authority granted by the stockholders, or under general authority conferred by the articles of incorporation or consolidation or any amendment thereof.

The act providing for shares without par value has no provision requiring a statement of the amount of capital with which the corporation will carry on business, but it is provided elsewhere that fifty per cent of the amount of authorized capital stock must be subscribed before the filing of the articles of incorporation and fifty per cent of all stock subscribed for must be actually paid in before the corporation engages in business and, until the full amount subscribed for has been paid in, the corporation shall not incur liabilities in excess of the amount paid in.

¹⁹ Rev. Codes of 1923, secs. 17-301 et seq.

For the purpose of computing any tax based on the amount of capital stock (or par value thereof), shares of no par value shall be taken to be of the par value of \$100 each.²⁰

§ 273. Same—Maine.—The certificate of incorporation or an amendment thereof may provide for the issuance of shares of stock of any one or more classes of whatever kind, without any nominal or par value.

A corporation having shares without par value may issue and dispose of such shares for such consideration as may be prescribed in the certificate of organization or amendment, or, if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for the purpose, or by the board of directors when acting under general or special authority granted by the stockholders.

The law does not require a corporation to set forth an amount of capital with which it will carry on business.

No provision is made that directors shall be liable for debts until a designated amount of capital has been paid in.

The organization tax is one cent per share on all shares authorized, but in no case less than \$10. The amount of the annual franchise tax shall be five mills per share on all shares authorized, but in no case less than \$10.¹

§ 274. Same—Maryland.—Any corporation may create one or more classes of stock without any nominal or par value with such preferences, voting powers, restrictions or qualifications thereof not inconsistent with law, as shall be expressed in its charter. Stock without par value which is preferred as to dividends or as to its distributive share of the assets of the corporation upon dissolution may be made subject to redemption at such times and prices as may be determined in its charter. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the charter.

The charter may provide that shares of stock of any class shall

²⁰ Act No. 96 of 1924.

¹ Secs. 115 to 119, inclusive, of chapter 51 of the Revised Statutes, as provided by chapter 224, Laws of 1921.

be convertible into shares of stock of any other class upon such terms and conditions as may be therein stated, except that shares of stock without par value shall not be convertible into shares of stock having a par value.

The charter may empower the board of directors to authorize the issuance from time to time of shares of its stock without par value of any class or securities convertible into shares of its stock without par value of any class, for such consideration as such board of directors may deem advisable.

The statute makes no provision requiring an amount of capital to be stated in the certificate of incorporation.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For tax purposes, shares without par value are held to have a par value of \$100 each.²

§ 275. Same—Massachusetts.—Any corporation may create shares of stock with or without par value and may create two or more classes of stock with such preferences, voting powers, restrictions and qualifications thereof as shall be fixed in the agreement of association or an amendment thereto.

Shares of stock without par value may be issued for cash, property, tangible or intangible, services or expenses as may be determined from time to time by the board of directors.

The statute makes no provision requiring stated capital.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

The organization tax is five cents for each share without par value, but not less than \$50.³

§ 276. Same—Michigan.—Any stock corporation organized for pecuniary profit may provide in the articles or amendments thereto for the issuance of shares of stock (other than preferred stock having a preference as to principal) without any nominal or par value.

Such corporation may issue and may sell its authorized non-par value shares from time to time for such consideration as may be

² Secs. 39 and 40 of article 23, Annotated Code, 1924.

³ Secs. 14 and 53 of chapter 156, General Laws (1921).

prescribed in the articles of incorporation or for such consideration as shall be the fair market value of such shares and, in the absence of fraud in the transaction, the judgment of the board of directors as to such value shall be conclusive as to creditors or stockholders; or for such consideration as shall be consented to by the holders of two-thirds of each class of shares then outstanding at a meeting called for that purpose in such manner as shall be prescribed in the by-laws.

The act provides that the amount of capital stock of any stock corporation paid in at the time of executing the articles shall not be less than 10% of the subscribed capital and in no case less than \$1,000, except in the case of a capitalization of \$2,000 or under, when it shall be not less than 25% thereof, and the amount paid in shall not be reduced below such percentage of its capital.⁴

The value placed upon each share of no par value by a corporation for the purpose of sale or for any other purposes, shall be taken as the basis of the franchise fees required at the time of incorporation or upon an increase of capital. Such value shall be at least \$1. Where any shares shall within one year after incorporation or after an increase in capital be exchanged for property or for other stock at a price in excess of that stated in the articles of association, there shall be filed with the secretary of state a sworn statement in respect thereto and there shall be paid to the secretary of state on account thereof an additional franchise fee computed at the same rate as in the case of original incorporation; provided, that no additional franchise fee shall be required where the value placed upon such shares is based upon earnings of a corporation.⁵

§ 277. Same — Minnesota.—Any corporation (except banks, trust companies, building and loan associations and insurance companies) may create one or more classes of stock without par value, with such preferences, voting powers, restrictions and qualifications as shall be expressed in its certificate of incorporation or any amendment thereto. Stock without par value which is preferred as to dividends or as to its distributive share of the assets upon dissolution, may be made subject to redemption at such times

⁴ Act 84, Pub. Acts 1921, as amended by Act 363, Pub. Acts 1925.

⁵ Act 223, Pub. Acts 1925.

and prices as may be determined in the certificate of incorporation or amendment.

Subject to any limitations set forth in the certificate of incorporation, any such corporation may, at any meeting called and held for that purpose, empower its directors to issue shares of its stock without par value and may authorize its directors to fix the amount of money or the actual value of the consideration for which such stock shall be issued, provided the certificate of incorporation or any amendment thereto may empower the directors to issue, from time to time, shares of such stock without par value for such consideration as the directors may deem advisable, subject to such limitations as may be set forth therein.

There is no provision requiring a statement of the amount of capital with which the corporation will carry on business.

The general laws relating to business corporations require a statement in the certificate of incorporation of the highest amount of indebtedness or liability to which the corporation shall at any time be subject.

For the purpose of taxes or fees to be paid on filing any certificate or paper relating to corporations, shares without par value shall be taken to be of the value of \$100 each.⁶

§ 278. Same—Missouri.—Provision may be made for the issue of shares of preferred stock of any or all classes, or common stock of any class or both preferred and common stock without any nominal or par value.

Preferences, rates, limitations, privileges and restrictions may be stated in dollars or cents per share in respect of non-par value shares.

The corporation may issue and dispose of its authorized shares having no nominal or par value from time to time for such consideration as may be prescribed or authorized in the articles of association or certificate of incorporation or reorganization or joint agreement of merger or consolidation, or if not so prescribed, then for such consideration as may be fixed by the stockholders of such corporation at any annual meeting thereof or at any special meeting thereof duly called and held or by the board of directors acting under authority of such stockholders given in like manner.

⁶ Chapter 333, Laws of 1925.

The certificate of incorporation shall set forth the amount of capital with which the corporation will begin business.

No corporation having shares without par value shall begin to carry on business or incur any indebtedness until the amount of the capital with which it will begin business, as set forth in its certificate of incorporation shall have been fully paid in in cash or property.

The act contains no provision making the directors liable for debts until the capital has been paid in.

For the purposes of taxes or fees to be paid on filing any certificate based on the par value of shares, shares without par value are considered the equivalent of shares having a par value of \$100.⁷

Shares without par value may be authorized by amendment of articles of association.⁸

§ 279. Same — Nevada.—Any corporation formed under the General Corporation Act may have shares without par value. The certificate of incorporation shall set forth the maximum number of shares with par value and the maximum number of shares without par value, that the corporation is authorized to have outstanding at any time, the classes, with the distinguishing characteristics of each, if any, into which the same are divided, and the par value of the shares other than shares which it is stated are to have no nominal or par value.

Corporations may issue and dispose of their authorized shares without par value, for such consideration as may be prescribed in the certificate or articles of incorporation, or in any amendment thereof, or, if no consideration is so prescribed, then for such consideration as may be fixed by the board of directors.

The amount of capital with which the corporation will begin business, which shall not be less than \$500, must be stated in the certificate of incorporation.

There is no provision making directors liable for debts until such amount of capital has been paid in.

⁷ Senate Bill 151, Laws of 1921.

⁸ Senate Bill 275, Laws of 1923.

The organization tax on shares without par value is 10 cents on each 1000 shares authorized, but in no case less than \$25.⁹

§ 280. **Same—New Hampshire.**—Any corporation may issue shares of stock with or without nominal or par value.

Every corporation may create two or more kinds or classes of stock with such preferences, voting powers, restrictions and qualifications as shall be fixed in the articles of agreement or determined by vote at the organization meeting, or by any amendment adopted in the manner provided by law.

Stock without nominal or par value may be issued for such consideration as the incorporators, at the organization meeting, may determine or for such consideration as the stockholders or directors may determine pursuant to authority conferred in the vote or votes authorizing such issue.

There is no provision in the act requiring an amount of capital to be stated in the certificate of incorporation.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of fixing the organization tax, shares without par value are deemed to have a par value of \$50.¹⁰

§ 281. **Same—New Jersey.**—Every corporation may provide for the issuance of one or more classes of stock without any nominal or par value, of such number of shares with such designations, preferences, if any, and voting powers or restrictions or qualifications thereof as shall be stated in the certificate of incorporation, or in any certificate of amendment thereof.

Any preferred stock, without nominal or par value, may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than the sum such corporation shall receive for said stock upon the issuance thereof, and the corporation shall be bound to pay thereon dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, payable quarterly, half-yearly or yearly, and such dividends may be made payable before any dividend shall be set apart or paid on the common stock or

⁹ Chapter 177, Laws of 1925.

¹⁰ Chapter 92, Laws of 1919, as amended by chapter 97, Laws of 1921.

stocks, and such dividends may be made cumulative; provided the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock or stocks before any dividend shall be paid on the common stock or stocks.

A corporation having shares without par value may issue and may sell its authorized shares, without nominal or par value, from time to time, for such consideration as may be prescribed in the certificate of incorporation or any amendment thereof, or, if so provided in the certificate of incorporation, as from time to time may be fixed by the board of directors, or if no such provision is made in the certificate of incorporation, then with the consent of two-thirds of each class of the stockholders having voting powers, given at a meeting called for that purpose.

The act makes no provision requiring an amount of stated capital to be set forth in the certificate.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

The organization tax is one cent (1c) for each share without par value.¹¹

Any corporation issuing shares without par value shall pay an annual franchise tax upon all shares issued and outstanding up to and including 20,000 shares, the sum of 3 cents per share; on all shares in excess of 20,000 shares and not exceeding 30,000 shares, the sum of 2 cents per share; on all shares in excess of 30,000 shares and not exceeding 40,000 shares, the sum of 1 cent per share; on all shares in excess of 40,000 shares and not in excess of 50,000 shares, the sum of 5 mills per share, and the further sum of 2½ mills per share on all shares of such stock issued and outstanding in excess of 50,000 shares.¹²

§ 282. Same—New Mexico.—Upon the formation or reorganization of any stock corporation, other than building and loan associations, trust companies and corporations authorized to transact business of banking or insurance, or upon the merger or consolidation of two or more such corporations, provision may be made for the issue of shares of preferred stock of any or all classes,

¹¹ Chapter 168, Laws of 1920, as amended by chapter 284, Laws of 1921.

¹² Chapter 337, Laws of 1921.

or common stock of any class, or both preferred and common stock, without any nominal or par value.

Preferences, rights, limitations, privileges, and restrictions may be stated in dollars or cents per share in respect to shares of stock issued in pursuance of the provisions of this act.

Such corporation may issue and may dispose of its authorized shares having no nominal or par value, from time to time, for such consideration as may be prescribed or authorized in the articles of association or certificate of incorporation or the joint agreement of merger or consolidation, or, if not so prescribed, then for such consideration as may be fixed by the stockholders of such corporation at any annual meeting thereof or at any special meeting thereof duly called and held or by the board of directors acting under authority of such stockholders given in like manner.

The amount of capital with which the organization will begin business (at least \$2,000) must be stated in the articles of association or certificate of incorporation or joint agreement of merger or consolidation. No corporation authorized to issue shares of stock without par value shall begin to carry on business, or shall incur any indebtedness, until the amount of capital with which it will begin business stated in pursuance of section 1 of the act, shall have been fully paid in cash or in property.

There is no provision in the act making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of computing any incorporation or other statutory fee, or any tax or taxes, the determination of which is based on the par value of shares of stock, and for the purpose of any statutory provision limiting the relation between indebtedness and capital stock, each share without nominal or par value shall be considered the equivalent to a share having a nominal or par value of \$100; or the actual value of such stock or any other basis may be adopted which will justly carry out the provisions of the statutes of this state; and the state corporation commission or any board or commission or officer having jurisdiction in the premises, may require such further statements of fact as may be reasonable and pertinent to the inquiry.¹³

¹³ Laws of 1923, chapter 47.

§ 283. Same—New York.—Any or all of the shares of any stock corporation, other than a moneyed corporation, may be issued without par value.

Such corporation may issue and may sell its authorized shares without par value from time to time, (a) for such consideration as may be prescribed in the certificate of incorporation; or (b) for such consideration as shall be the fair market value of such shares, and, in the absence of fraud in the transaction, the judgment of the board of directors as to such value shall be conclusive; or (c) in the absence of fraud in the transaction, for such consideration as, from time to time, may be fixed by the board of directors pursuant to authority conferred in the certificate of incorporation; or (d) for such consideration as shall be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner prescribed by the by-laws, provided the call for such meeting shall contain notice of such purpose.

Either one of the following statements must be included in the certificate of incorporation:

A. "The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus dollars (the blank space being filled in with some number representing one dollar or more) in respect to every issued share without par value, plus such amounts as, from time to time, by resolution of the board of directors, may be transferred thereto"; or

B. "The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as, from time to time, by resolution of the board of directors, may be transferred thereto."

There may also be included an additional statement that the capital shall not be less than dollars (the blank space being filled in with a number).

There is no provision in the law making directors liable for debts until a designated amount of capital has been paid in.

The changes that may be effected by a stock corporation with respect to its shares or capital stock include the following: To change all or any of its previously authorized shares with par

value, issued or unissued, into the same or a different number of shares of any class or classes without par value.¹⁴

The organization tax is at the rate of five cents for each share without par value.¹⁵

§ 284. Same — North Carolina.— Any corporation except banks, trust companies, railroad companies and insurance companies, may in its original certificate of incorporation, articles of association or any amendment thereof, create shares of stock with or without nominal or par value, and may create two or more classes of stock, any class or classes of which may be with or without par value, with such preferences, voting powers, restrictions and qualifications as shall be fixed in such certificate of incorporation, articles of association or amendment thereof, or by resolution adopted by those holding two-thirds of the outstanding capital stock entitled to vote.

Such stock may be issued for cash, property, tangible or intangible, services or expenses as may be determined from time to time by the board of directors, subject to the provisions of the certificate of incorporation, articles of association or amendment thereof or the conditions contained in any vote of the holders of a majority of the stock of the corporation.

The law does not require an amount of capital with which the corporation will carry on business, to be stated in the certificate of incorporation.

The act contains no provision making the directors liable for debts until a designated amount of capital has been paid in.

For tax purposes non-par value shares are treated as if each share had a par value of \$100.¹⁶

§ 285. Same—Ohio.—The articles of incorporation may provide for the issuance of shares of common stock without any nominal or par value. Every share of such common stock without nominal or par value shall be equal to every other share of such stock, except that the articles of incorporation may provide that

¹⁴ Secs. 12 and 36 of the Stock Corporation Law, as provided by chapter 787, Laws of 1923, and amended by chapter 441, Laws of 1924.

¹⁵ Sec. 180, Tax Law, as amended by chapter 794, Laws of 1923.

¹⁶ Chapter 116, Laws of 1921, as amended by chapter 262, Laws of 1925.

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such stock shall be divided into different classes, with such designations and voting powers or restrictions or qualifications thereof as shall be stated therein, but all of such stock shall be subject to the preferences given to the preferred stock, if any, authorized to be issued.

At the time of opening books of subscriptions to the capital stock, subscriptions may be received for the common shares without nominal or par value, for such consideration as may be decided upon by a majority of the incorporators at the time of ordering books to be opened for subscriptions. Thereafter, the corporation may issue and sell its said common shares from time to time for such consideration as shall be the fair market value of such shares as fixed by its board of directors, or for such consideration as shall be consented to in writing by the holders of all of the outstanding shares of common stock, or for such consideration as shall be fixed by the vote of a majority in number of the outstanding common shares at a meeting called for that purpose.

The corporation shall state in its certificate the amount of common capital with which the corporation will begin to carry on business, which shall not be less than \$500.

The act provides that directors shall be liable for debts incurred before the amount of common capital stated in articles of incorporation has been paid and a certificate to that effect has been filed with the secretary of state.

The organization tax is five cents (5c) for each share without par value, the minimum tax being \$25.¹⁷

§ 286. **Same — Oregon.**—Any corporation, except trust companies, building and loan associations and corporations organized for the purpose of carrying on the business of banking, insurance or suretyship, may, if so provided in its articles of incorporation, or in supplementary articles of incorporation, issue part or all of the shares of capital stock without any nominal or par value, with such designations thereof, as shall be stated and expressed in such articles of supplementary articles of incorporation. The preferences, rights, limitations, privileges and restrictions, if any, of any such class of non-par value stock shall be stated by dollars and

¹⁷ Secs. 8728-I et seq., General Code (Revised to 1921), as amended by Senate Bill 274, Laws of 1923.

cents per share, where applicable, rather than by reference to any nominal or par value.

Corporations so authorized to issue stock without nominal or par value may, from time to time, issue and dispose of such shares having no nominal or par value for such consideration in cash or in property at its fair cash value, as may be prescribed in the articles of incorporation, or supplementary articles, or if no consideration is so prescribed then for such consideration in cash, or in property at its fair cash value, as may be fixed by the incorporators before opening the books for subscription, or as may be fixed from time to time either by the stockholders at a meeting duly called for that purpose, or by the board of directors when acting under general or special authority granted by the stockholders.

Where all or part of the shares are without nominal or par value the articles of incorporation shall set forth the amount of capital to be paid in before the corporation shall begin business, which amount shall in no event be less than \$1,000.

No corporation authorized to issue shares without par value shall begin to carry on business or incur any indebtedness until one-half of the par value stock, if any, which the corporation is authorized to issue, shall have been subscribed, and the amount of capital with which it shall begin business as stated in the articles of incorporation shall have been fully paid up in cash or in property taken at its actual value.

For the purpose of determining the amount of the organization or annual license fee payable by any corporation having shares without par value, such shares shall be taken to have a par value of \$100 each.¹⁸

§ 287. **Same—Pennsylvania.**—Provision may be made in the certificate of incorporation for the issuance of shares of preferred stock of any or all classes, or common stock of any class, or both preferred and common stock, without any nominal or par value. Preferences, rights, limitations, privileges and restrictions authorized by the constitution and laws of the commonwealth of Pennsylvania may be stated in dollars or cents per share, in respect to shares of stock issued in pursuance of the act authorizing shares without par value.

¹⁸ Chapter 182, Laws of 1923, as amended by chapter 291, Laws of 1925.

A corporation having shares without par value may issue and may dispose of its authorized shares having no nominal or par value from time to time for such consideration as may be prescribed in the certificate of incorporation or reorganization, or the joint agreement of merger or consolidation, or if not so prescribed, then for such consideration as may be fixed by the stockholders of such corporation at any annual meeting thereof or at any special meeting thereof duly called and held for the purpose, or by the board of directors acting under authority of such stockholders given in like manner.

The law requires the corporation to set forth in its certificate of incorporation the amount of capital with which it will begin business.

No corporation having shares without par value shall begin to carry on business or incur any indebtedness until the amount of stated capital shall have been fully paid in.

For the purpose of fixing the organization tax, shares without par value are deemed to have a par value of \$100 each.¹⁹

Shares without par value may be authorized in the manner prescribed for increasing the capital stock.²⁰

§ 288. Same—Rhode Island.—Any corporation may, in its articles of association, provide that all or any one or more classes of its stock of whatever kind shall have no par value.

Such stock may be issued by the corporation from time to time for such consideration, consisting of cash, services, personal property, tangible or intangible, or real estate, as may be fixed from time to time by the board of directors, pursuant to authority conferred in the articles of association, or if such articles shall not so provide, then by the vote of the holders of a majority of each class of stock then outstanding and entitled to vote, given at a meeting called for that purpose.

The act does not require a corporation to set forth an amount of capital with which it will carry on business.

¹⁹ Act of July 12, 1919 (P. L. 914); Pa. Stats. 1920, sections 5656, 5659, 5660 and 5666.

²⁰ Act of May 21, 1923 (P. L. 288).

The act contains no provisions making directors liable for debts until a designated amount of capital has been paid in.¹

The organization tax is five cents (5c) for each share without par value.²

For the purpose of estimating the minimum annual tax on domestic corporations, shares without par value are deemed to be of the par value of \$100 per share.³

§ 289. Same—Tennessee.—All private corporations shall have the right to divide their capital stock into common and preferred stock, and stock without par value; provided, it shall be stated in the charter of incorporation of any amendment thereof how much of the capital stock is to be common stock, how much preferred stock and how much stock without par value.

Any corporation may, if so provided in its certificate of incorporation or in an amendment thereof, issue shares of stock without any nominal or par value. Every share of such stock without nominal or par value shall be equal to every other share of such stock, except the certificate of incorporation may provide that such stock shall be divided into different classes with such designation and voting powers or preferences or restrictions or qualifications thereof as shall be stated therein.

Such stock may be issued from time to time for such consideration as may be fixed from time to time by the board of directors pursuant to authority conferred in the certificate of incorporation.

There is no provision in the act requiring a corporation to set forth an amount of capital with which it will carry on business.

There is no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of the taxes prescribed to be paid on the filing of any certificate or other paper relating to corporations and of franchise taxes, shares without par value shall be taken to be of the par value of \$100 each.⁴

¹ Section 31, chapter 248, General Laws 1923, as amended by chapter 651, Laws of 1925.

² Section 85, chapter 248, General Laws 1923.

³ Section 31, chapter 38, General Laws 1923.

⁴ Chapter 63, Laws of 1923.

§ 290. **Same—Texas.**—Provisions may be made for the issuance of shares without par value upon the organization or amendment of charter of any corporation for profit, other than banking or insurance corporations. Every such share shall be equal in all respects to every other such share except that the charter or amendment may provide that such shares shall be divided into different classes, the shares of each class to have such preferences, designations, rights, privileges and powers and be subject to such restrictions, limitations and qualifications as shall be stated in the charter or any amendment thereof.

Corporations may issue and dispose of their authorized shares having no par value for such consideration as may be prescribed in the original charter or any amendment thereof; or if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for the purpose, or by the board of directors when acting under general or special authority granted by the stockholders, or by the board of directors when acting under general authority conferred by the original charter or any amendment thereof; such consideration to be in the form of money paid, labor done or property actually received.

Corporations authorizing the issue of shares without par value shall file with the charter or any amendment to a charter authorizing the issuance of such stock, a certificate showing that all stock having a par value, if any, has been in good faith subscribed and 50% thereof paid in, in cash, property or labor done and stating the number of shares without par value subscribed and the actual consideration received by the corporation for such shares; provided, however, the stockholders shall be required, in good faith to subscribe and pay for at least 10% of the authorized shares to be issued without par value before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without par value; provided further, that in no event the amount as paid shall be less than \$25,000.

There is no provision in the act making directors liable for corporate debts contracted before such amount of capital has been paid in.

The organization tax as to shares without par value is \$50 for the first \$10,000 of actual consideration received by the corporation

for any such shares issued and \$10 for each additional \$10,000 or fraction thereof. Shares without par value not subscribed and paid for shall, for the purpose of computing such fee, be assumed to have the same value per share as that for which the shares actually subscribed and sold were issued. If any unissued shares without par value be thereafter issued for a consideration or value per share in excess of the value such shares were assumed to have when the charter was filed, then, at the time of filing the required certificate showing such consideration, the corporation shall pay additional fees at the foregoing rates upon such excess value or consideration, provided the aggregate of such fees shall never exceed \$2,500.

For the purpose of computing the annual franchise tax, shares without par value shall be treated as having the value actually received for the issuance of such shares as disclosed by the charter or any amendment thereof or the certificate filed after the issuance of such shares.⁵

§ 291. Same—Utah.—Any corporation may, if so provided in its articles of agreement or in an amendment thereof, issue shares of stock without par value. Every share of such stock without nominal or par value shall be equal to every other share of such stock except that the articles of agreement may provide that such stock shall be divided into different classes with such preferences, designations and voting powers or restrictions or qualifications thereof as shall be stated therein. In case of preferred stock without par value, the articles of incorporation may state the amount in dollars at which such stock shall participate in dividends or in any distribution of assets in preference to common stock.

Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof, pursuant to authority conferred in the articles of agreement, or, if such articles of agreement shall not so provide, then by the consent of the holders of two-thirds of each class of stock then outstanding and entitled to vote, given at a meeting called for that purpose.

The law does not require an amount of capital with which the

⁵ Senate Bill 46, Laws of 1925.

corporation will carry on business to be stated in the certificate of incorporation.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For tax purposes non-par value shares are held to have a par value of \$100 each.⁶

§ 292. Same—Vermont.—Every corporation, in its articles of association or in an amendment thereof, may create shares of stock with or without par value, and may create two or more classes of stock with such preferences, voting powers, restrictions and qualifications thereof, as shall be fixed in said articles of association or amendments thereof. If there be a preference as to principal, the amount to which each share shall be entitled upon liquidation or dissolution shall not be less than \$5 or some multiple thereof not exceeding \$100.

Shares without par value may be issued for cash, real or personal property, rights, franchises or services at such value as may be determined by vote of the incorporators, or, subsequent to organization, by vote of the stockholders. Stock may not be issued until an affidavit setting forth the consideration for issue has been filed with the secretary of state.

In case of stock without par value, the number of shares of such capital stock shall not be less than ten, representing at least \$500.

There is no provision requiring an amount of capital with which the corporation will carry on business to be stated in the articles of association, but before a corporation commences business a certificate stating the amount of capital actually paid in must be filed in the office of the secretary of state and a certified copy thereof must be filed with the clerk of the town in which the principal place of business is to be located; and, if the corporation contract debts before a copy of its articles of association and such certificate is filed with such town clerk, the president and directors assenting thereto shall be personally liable for such debts.

For purposes of the organization tax and the annual license tax, stock without par value shall be construed as of the par value of \$100 per share.⁷

⁶ Chapter 22, Laws of 1921, as amended by chapter 57, Laws of 1923.

⁷ Act No. 81, Public Acts of 1925.

§ 293. **Same—Virginia.**—Any corporation except banks, trust companies and similar corporations, may, in its certificate of incorporation or any amendment thereof, provide for the issue of all or any classes of shares of stock in such corporation without nominal or par value, by stating the number and classes of shares that may be issued without nominal or par value, each share of the same class to be equal in every respect to every other share of such class, entitled to equal vote and dividends and in the case of distribution of the assets, whether voluntary or otherwise, to the same amount out of the assets of such corporation as every other share of such class, subject to such preferences in favor of other classes of stock, if any, as may be stated. If there be more than one class of stock, designation shall be made of the different classes thereof, and if any of such shares be preferred as to voting power or as to their distributive right in the profits of the corporation or in the assets thereof upon distribution, whether voluntary or otherwise, statement shall be made of the number of shares of such stock having such preferences, and the character thereof and if preferred as to their distributive share in the assets of the corporation, the amount in dollars as to which each such share shall be preferred over the shares of any class of stock.

Any corporation may dispose of its stock at such prices, for such consideration, and on such terms and conditions as it sees fit; but, before making any issue of its stock or bonds it shall file with the state corporation commission a statement setting forth the basis or financial plan upon which such stock and bonds are to be issued.

The act makes no provision requiring the amount of capital with which the corporation will carry on business, to be stated in the certificate of incorporation.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of determining fees or taxes based on authorized capital stock, shares without par value are held to have a par value of \$100 each.⁸

§ 294. **Same—Washington.**—Any corporation other than one organized for banking, savings, and loan, trust company, insurance, guaranty or surety purposes, may have and issue shares of

⁸ Chapter 48, Laws of 1919.

either common or preferred stock without any nominal or par value.

The articles of incorporation may provide that the stock of the corporation shall consist wholly of stock having a par value or wholly of stock without nominal or par value, or partly of one class of stock and partly of the other class. Existing corporations may provide for non-par value stock by amendment.

Non-par-value stock, where authorized, may be issued from time to time for such consideration, in labor, services, money or property, as may be fixed by the Board of Trustees pursuant to the articles of incorporation, or, if such articles shall not so provide, then by the consent of the holders of two-thirds of every class of stock then outstanding and entitled to vote.

In case the articles of incorporation provide, in whole or in part, for non-par-value stock, the articles shall state the amount of capital (herein called "Initial Non-Par-Capital"), with which the corporation will begin to carry on business, which amount shall not be less than \$500 and shall be in addition to any amount of capital which may be designated for stock having par value.

There is no provision in the act making directors liable for debts until such amount of capital has been paid in.

In the case of a corporation whose stock is wholly or partly without par value, there shall be filed with the articles of incorporation the affidavit of one of the incorporators, or other representative of the corporation, stating that, to the best of his knowledge and belief, the value of the assets received and to be received by such corporation in return for the issuance of its non-par-value stock does not exceed a certain sum therein named, and the sum so named in such affidavit shall be assumed *prima facie* as the amount of capitalization represented by such non-par-value stock for the purpose of fixing the filing fees and annual license fees; provided, that at any time within two years after the filing of such articles of incorporation, the secretary of state may investigate and make a finding as to the value of such assets.⁹

§ 295. Same—West Virginia.—Any corporation, except banks, trust, fidelity, surety, guaranty, bonding, insurance and title companies, building and loan associations, railroad, mutual investment

⁹ Chapter 168, Laws of 1923.

associations, mortgage companies, mortgage and discount companies, may, if so provided in its charter, issue shares of stock of any one or more classes without any nominal or par value. Any such corporation may be reorganized so that it may issue shares without par value.

The agreement of incorporation and the certificate of incorporation issued by the secretary of state, or the stockholders in a general meeting, by a resolution or by by-laws, may provide for or authorize the issuance of non-par value stock on such terms and conditions and with or without the right to vote in stockholders' meetings and with such other regulations as the stockholders may deem proper or as may be named in the agreement of incorporation and the certificate of incorporation.

Stock having no par value may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof, pursuant to authority conferred in its charter, or if such charter shall not so provide, then by the vote of the holders of two-thirds of each class of stock then outstanding and entitled to vote, given at a meeting called for that purpose.

In the case of a corporation having only stock without par value, at least \$500 shall be paid in good faith before the certificate of incorporation shall be issued, and for this sum as many shares may be issued as the board of directors may determine, after the organization of the corporation.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

For the purpose of fixing the annual license tax, which corporations pay at the time of organization, shares without par value are presumed to have a par value of \$25 provided that if such shares are originally issued for a consideration greater than \$25 per share, the tax shall be computed on the basis of the consideration for which the stock was issued.¹⁰

§ 296. Same — Wisconsin.—Any corporation may, if so provided in its articles of incorporation, or in an amendment thereof,

¹⁰ Barnes's Annotated Code 1923, sections 15 and 24 of chapter 53, as amended by chapter 35, Laws of 1925; sections 6A and 7 of chapter 54 and section 129 of chapter 32.

issue shares of stock (other than stock preferred as to dividends or preferred as to its distributive share of the assets of the corporation, or subject to redemption at a fixed price), without nominal or par value.

Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof, pursuant to authority conferred in the articles of incorporation, or if such articles shall not so provide, then by the consent of the holders of two-thirds of each class of stock then outstanding and entitled to vote, given at a meeting called for that purpose.

The act makes no provision requiring a statement of the amount of capital with which the corporation will carry on business.

The act contains no provision making directors liable for debts until a designated amount of capital has been paid in.

The organization tax is at the rate of 5 cents for each non-par value share.¹¹

§ 297. Clause Providing for Stock Without Par Value.

The total number of shares authorized is fifty thousand (50,000), which shares are without nominal or par value. Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof.

The number of shares with which this corporation will commence business is fifteen thousand (15,000).

The names and places of residence of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name	Residence	No. of Shares
.....
.....
.....

§ 298. Clause Providing for Common and Preferred Stock Without Par Value.

The number of shares that may be issued by the corporation is one hundred thousand (100,000) shares without a nominal or par value, twenty-five thousand (25,000) shares to be preferred shares and seventy-five thousand (75,000) shares to be common shares.

The shares of the preferred stock may be issued from time to time at such price or prices, may be given such preferences as to assets upon

¹¹ Section 182.14, Wisconsin Statutes 1925.

dissolution or winding up of the corporation, whether voluntary or involuntary, may be given the right to receive such cumulative or non-cumulative dividends, payable quarterly, half yearly or yearly and payable as a whole or in part before any dividend shall be set apart or paid on the common stock, may be authorized to be issued in more than one series of the same class, each series carrying the same or different rates of dividends, may be given full, qualified, or no voting rights, may be made convertible into shares of other classes of preferred or common stock with or without nominal or par value and may have such other preferences, designations, rights, privileges and powers and may be made subject to such other restrictions, limitations and qualifications as shall be deemed advisable and to the best interests of the corporation and from time to time determined upon by the Board of Directors.

The whole or any part of the capital stock without nominal or par value of this corporation, may be issued from time to time without action by the stockholders, for such consideration as may be fixed from time to time by the Board of Directors, and shares so issued, the full consideration for which has been paid or delivered, shall be deemed full paid stock, and the holder of such shares shall not be liable for any further payment thereon.

The names and places of residence of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name	Residence	No. of Shares
		Preferred—Common
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.....
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§ 299. Clause Providing for Common and Preferred Stock, Common Without Par Value.

The total number of shares which may be issued by the corporation is one hundred thousand (100,000).

Of said shares twenty thousand (20,000) shall be preferred stock of the par value of one hundred dollars (\$100), and eighty thousand (80,000) shares shall be common stock which shall have no nominal or par value.

Said common stock without nominal or par value, may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the board of directors thereof.

The holders of the preferred stock shall be entitled to receive out of the net earnings a dividend at the rate of seven per centum (7%) per annum, when declared by the board of directors, payable annually before any dividends shall be set apart for or paid in any year on the common stock.

In any year after the preferred stock has received its stipulated dividends and the common stock has received dividends of the same amount per share as that prescribed for the preferred stock, if the directors elect

to make further distributions of earnings such distributions shall be made to all the shares, preferred and common, at the same rate per share.

In case of dissolution, and after payment of all the debts of the company, the assets shall first be applied to the payment in full of the preferred stock at par and the remainder shall be applied first to the payment of dollars (\$.) on the common stock, and then to the payment of an equal sum on the preferred and common stock, share and share alike.

The amount of capital stock with which this corporation will commence business is one hundred shares of common stock without nominal or par value.

Name	Residence	No. of Shares
.....
.....
.....

CHAPTER XXIII.

BLUE SKY LAWS.

- § 300. Regulation of Issuance of Corporate Securities.
- § 301. Blue Sky Legislation, Validity of.
- § 302. Interpretation of Blue Sky Laws.
- § 303. Corporations or Associations Within Act.
- § 304. "Massachusetts Trusts" as Within Act.
- § 305. What Property Comes Within Act.
- § 306. What Constitutes Sale Within Act.
- § 307. Sale of Stocks, Corporate Securities, etc., by Owner.
- § 308. Validity of Sale Made in Violation of Act.
- § 309. Rights as Between Violators of Blue Sky Law.
- § 310. Permit to Sell Securities.
- § 311. Powers and Duties of Blue Sky Commissioners.

§ 300. **Regulation of Issuance of Corporate Securities.**—In recent years the attention of the state legislators has been more and more turned to the regulation of the issuance of corporate securities. These include not only the stocks of the corporation, but their bonds, debentures, notes, certificates of indebtedness, and other instruments of like character. This regulation is done in the interest of the public, and in the interest of the promoters and investors as well. A large number of states have adopted the so-called "Blue Sky Laws" regulating the issuance and sale of corporate stocks and securities. In some states they are termed "Investment Company Laws." The degree of strictness with which the affairs of companies are looked into before permits are granted for the sale of stock, differs widely in the various states. In some the application is secured as a matter of course; in others a very careful investigation is made as to the merits of the enterprise, the character of the promoters, and the probable actual value of the proposed securities. In general it may be said that a permit to sell securities granted by a state whose corporation department is known for its strictness, is a valuable adjunct to the sale of securities when granted. It is to a certain extent an endorsement both as to the security and the character of the promoters.

§ 301. **Blue Sky Legislation, Validity of.**—The general theory of the type of legislation known generally as "Blue Sky Laws" is to

forbid the flotation of stocks or corporate securities until evidence of the soundness of the investment has been submitted to a public officer or a board,¹ and official permission to put the stock or securities on sale obtained.² Though the validity of such legislation was, at first, rather a mooted question, it has now been put to rest by three decisions of the United States supreme court so far as the provisions of the federal constitution are concerned.³

The clearly indicated purpose of Blue Sky Law is to protect the public from deceit and prevent fraud in the sale and disposition of stocks, bonds, and other securities within the state. Or, as has been said, to put a stop to the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other ill-considered or fraudulent enterprises.⁴ The authority of the legislature to adopt a statute of this character is found in the police power, for the promotion of the general welfare by the prevention of frauds.⁵

§ 302. Interpretation of Blue Sky Laws.—Blue Sky Laws are designed to regulate the sale of corporate securities, and their purpose is to protect investors, not to regulate the ordinary business of corporations, domestic or foreign, within the state.⁶ They belong to that type of legislation sometimes referred to as the “paternal activity” of government. It is an attempt to throw about the individual who is about to invest his money in certain kinds of property a protecting arm of governmental authority. In other words, by regulating and controlling those engaged in the business of selling certain types of personal property, and if need be prohibiting certain undesirable persons or concerns from engaging in that type of business, the law protects those from loss who, either through care-

¹ *Moore v. Moffatt*, 188 Cal. 1, 204 Pac. 220.

² *Lilley v. Sterling Oil & Refining Co.*, 108 Kan. 686, 197 Pac. 201.

³ *Hall v. Geiger-Jones Co.*, 242 U. S. 539, 37 S. Ct. 217, 61 L. Ed. 480, L. R. A. 1917F 514, A. C. 1917C 643, reversing 230 Fed. 233, *Caldwell v. Sioux Falls Stock Yards Co.*, 242 U. S. 559, 37 S. Ct. 224, 61 L. Ed. 493; *Merrick v. N. W. Halsey & Co.*, 242 U. S. 568, 37 S. Ct. 227, 61 L. Ed. 498, reversing 228 Fed. 805.

⁴ *Stewart v. Brady*, 300 Ill. 425, 133 N. E. 310; *Hornaday v. State (Okla. Cr.)*, 208 Pac. 228.

⁵ *Stewart v. Brady*, 300 Ill. 425, 133 N. E. 310; *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937; *Schmidt v. Stortz*, 208 Mo. App. 439, 236 S. W. 694; *Hornaday v. State (Okla. Cr.)*, 208 Pac. 228.

⁶ *Goodyear v. Meux*, 143 Tenn. 287, 228 S. W. 57.

lessness or ignorance, might otherwise become the victims of fraudulent design.⁷ While they are penal in character, and like other legislative acts, are to receive a reasonable construction, with a view to effect the legislative intent, they will not be extended by construction to include cases which are clearly outside their scope.⁸ They are not passed as revenue measures, but their real intent is to safeguard the public from unsubstantial securities.⁹ In some states, such as Minnesota, it is provided that the statute shall not apply to isolated or single transactions.¹⁰

That the penalties for violation of a Blue Sky Law are drastic does not authorize the court to except from its provisions transactions that are clearly within its letter and spirit as well as within the mischief which the law was intended to meet.¹¹ A foreign corporation desiring to sell its stock in a state is bound to comply with the provisions of the Blue Sky Law before such undertaking, although it might carry on its business in other respects without such compliance, if it became domesticated under the provisions of the proper statute.¹² "Interest" in a lease and option of mining property evidenced by certificates each representing 1/3000ths part of the property and of the assets of a trust under which the property is to be operated, are "securities" as that term is defined in the Corporate Securities Act of California, and a sale or issuance thereof without a permit as provided by the act is unlawful.¹³ Partnerships, as distinguished from individual natural persons, may be forbidden from selling securities unless a permit is procured; and a statute, in prescribing such a prohibition as to partnerships, is not unconstitutional.¹⁴

§ 303. Corporations or Associations Within Act.—A corporation is capable of violating a Blue Sky Law, but as it cannot be imprisoned, the corporation, on conviction, is liable to a fine only.

⁷ *People v. Pace*, 73 Cal. App. 548, 238 Pac. 1089.

⁸ *Kirk v. Farmers' Union Grain Agency*, 103 Ore. 43, 202 Pac. 731.

⁹ *Ashley & Rumelin v. Brady*, 41 Idaho 160, 238 Pac. 314.

¹⁰ *State v. Summerland*, 150 Minn. 266, 185 N. W. 255.

¹¹ *Guaranty Mortgage Co. v. Wilcox*, 62 Utah 184, 218 Pac. 133, 30 A. L. R. 1324.

¹² *Biddle v. Smith*, 148 Tenn. 489, 256 S. W. 453.

¹³ *Agnew v. Daugherty*, 189 Cal. 446, 209 Pac. 34.

¹⁴ *People v. Simonsen*, 64 Cal. App. 97, 220 Pac. 442.

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The directors and secretary, however, so offending are liable to both fine and imprisonment.¹⁵ An association conducting an investment business under a declaration of trust limiting the liability of the parties to the amount of the trust fund is a corporation within a Blue Sky Law which defines a corporation as any association having privileges not possessed by individuals or partnerships.¹⁶ A corporation formed to operate a beet sugar factory and selling stock only to sugar beet growers and in connection with a contract to grow sugar beets is within a Blue Sky Law.¹⁷ A corporation confining its business within the state to real estate loans need not comply with the Blue Sky Law.¹⁸

The Ohio act applies not only to corporations, but to copartnerships, associations, and the like, and the sale of "membership receipts" in an association giving the purchaser a pro rata share in the earnings is within the act.¹⁹ By its terms the Missouri act is made applicable to unincorporated associations as well as to corporations.²⁰ The Arkansas act has been held to be applicable to domestic as well as foreign corporations, its language referring generally to corporations.¹

§ 304. "Massachusetts Trusts" as Within Act.—A common-law trust of the Massachusetts type has been held to be within the operation of a statute declaring every person, corporation, copartnership, company, or association organized in the state, whether incorporated or not, which shall sell or negotiate for the sale of any contract, stock, bonds, or other securities issued by him, them, or it, to be an investment company which is forbidden to sell its securities without approval from the commissioner, so that it cannot sell certificates of interest in itself without such approval.² Therefore, it is generally held that a sale by trustees, without a permit from the

¹⁵ *Kirk v. Farmers' Union Grain Agency*, 103 Ore. 43, 202 Pac. 731.

¹⁶ *Reilly v. Clyne*, 27 Ariz. 432, 234 Pac. 35.

¹⁷ *National Bank of the Republic v. Price*, 65 Utah 57, 234 Pac. 231.

¹⁸ *Reed v. Appleby*, 150 Tenn. 63, 262 S. W. 35.

¹⁹ *Groby v. State*, 109 Ohio St. 543, 143 N. E. 126.

²⁰ *State v. Hudson*, 214 Mo. App. 260, 259 S. W. 877.

¹ *City National Bank v. De Baum*, 166 Ark. 18, 265 S. W. 648.

² *King v. Commonwealth*, 197 Ky. 128, 246 S. W. 162. See, also, *Schmidt v. Stortz*, 208 Mo. App. 439, 236 S. W. 694; *People v. Clum*, 213 Mich. 651, 182 N. W. 136.

commissioner of corporations, of unit shares or unit interests in a common-law trust company organized in pursuance of a declaration of trust executed between the trustees, is a violation of a Blue Sky Law.³ In Oregon, however, it has been held that a foreign business trust seeking a permit to sell its capital shares or certificates, receiving funds therefor to invest in property which the association shall hold in trust for its shareholders, comes within the purview of a statute regulating foreign trust companies and associations, and is not under the supervision of the commissioner of corporations, provided for in the Blue Sky Law.⁴

§ 305. What Property Comes Within Act.—The term “property,” as used in the words “intangible assets or property” in the West Virginia Blue Sky Law, is not limited to “intangible property,” but is inclusive and covers all kinds of property, whether real or personal.⁵ “Beneficiary shares” in an unincorporated association are within an act requiring compliance with certain conditions before selling “stocks, bonds or other securities.”⁶ A so-called “member’s certificate of interest” in a company which terms itself a “common-law company” or a “common-law trust” has been held to be within a Blue Sky Act.⁷ A “unit” which entitles the owner thereof to an undivided beneficial interest in the assets of the association, and in the profits resulting from the operation thereof, and which entitles him to participate in the management thereof by casting one vote at any meeting of the unit holders, the unit being registered in the owner’s name on the books of the association, is a security within the meaning of the Minnesota Blue Sky Law.⁸

It has been held, however, that a “service contract” under which goods were to be sold to a member at cost, plus a very small per cent

³ *In re Girard*, 186 Cal. 718, 200 Pac. 593. See, also, *Matteson v. Weaver*, 229 Mich. 495, 201 N. W. 473; *People v. Clum*, 213 Mich. 651, 182 N. W. 136; *Wagner v. Kelso*, 195 Iowa 959, 193 N. W. 1; *State v. Cosgrove*, 36 Idaho 278, 210 Pac. 393; *Schmidt v. Stortz*, 208 Mo. App. 439, 236 S. W. 694; *Home Lumber Co. v. Hopkins*, 107 Kan. 153, 190 Pac. 601, 10 A. L. R. 879; *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937; *McCamey v. Hollister Oil Co.* (Tex. Civ. App.), 241 S. W. 689.

⁴ *Superior Oil & Refining Syndicate v. Handley*, 99 Ore. 146, 195 Pac. 159.

⁵ *Conway v. Bailey*, 91 W. Va. 324, 112 S. E. 579.

⁶ *State v. Hudson*, 214 Mo. App. 260, 259 S. W. 877.

⁷ *Wagner v. Kelso*, 195 Iowa 959, 193 N. W. 1.

⁸ *State v. Summerland*, 150 Minn. 266, 185 N. W. 255.

of profit, does not come within the purview of a Blue Sky Law, where the member acquires no rights either in the capital or profits of the company.⁹ Nor does a contract for the sale of a patent right come within the Kansas Blue Sky Law, forbidding the sale of "speculative securities" by public offering, without a permit therefor having been obtained from the bank commissioner.¹⁰

§ 306. What Constitutes Sale Within Act.—A "sale" of shares of stock within a Blue Sky Law includes an "agreement to sell," and it is no defense that the transaction was a subscription for and not a purchase of stock.¹¹ So a person who agrees to underwrite certain shares of stock on which another holds an option, paying the price thereof, is a purchaser within such a law, though he permits the optionee to retain possession and control.¹² Also a contract by a going investment company to dispose of increased shares of its preferred capital stock is a sale within the meaning of such a law, which requires a license to render it valid and is not a mere subscription.¹³ On the other hand if the selling or offering for sale of a speculative security is done by private sale or by privately offering for sale, the Blue Sky Law has no application, for the statute is directed only to the sale or offer to sell speculative securities by means of any advertisement, circulars, or prospectus, or by any other form of public offering.¹⁴ Nor is a contract undertaking to sell a patent right within the provisions of the Kansas act requiring a permit for the sale of speculative securities.¹⁵

⁹ *Creasy Corporation v. Enz Bros. Co.*, 177 Wis. 49, 187 N. W. 666.

¹⁰ *Schomoyer v. Van Hosen*, 111 Kan. 759, 208 Pac. 554.

¹¹ *Rhines v. Skinner Packing Co.*, 108 Neb. 105, 187 N. W. 874; *Edward v. Ioor*, 205 Mich. 617, 172 N. W. 620, 15 A. L. R. 256; *Creasy Corp. v. Enz Bros. Co.*, 177 Wis. 49, 187 N. W. 666; *Schmidt v. Stortz*, 208 Mo. App. 439, 236 S. W. 694; *Stewart v. Brady*, 300 Ill. 425, 133 N. E. 310; *Domenigoni v. Imperial Live Stock & Mortgage Co.*, 189 Cal. 467, 209 Pac. 36.

¹² *People v. Hartman*, 228 Mich. 171, 199 N. W. 657.

¹³ *Guaranty Mortgage Co. v. Wilcox*, 62 Utah 184, 218 Pac. 133, 30 A. L. R. 1324.

¹⁴ *Raynard v. State*, 19 Ala. App. 281, 96 So. 723. See, also, *Ex parte Lamb*, 61 Cal. App. 321, 215 Pac. 109; *Goddard v. General Reduction & Chemical Co.*, 57 Utah, 180, 193 Pac. 1103; *State v. Brady*, 194 Iowa 545, 188 N. W. 669; *Hornaday v. State* (Okla. Cr.), 208 Pac. 228.

¹⁵ *Schomoyer v. Van Hosen*, 111 Kan. 759, 208 Pac. 554.

§ 307. Sale of Stocks, Corporate Securities, etc., by Owner.

—An owner of corporate stock selling his own shares is not ordinarily a “dealer” in corporate stocks within a Blue Sky Law.¹⁶ However, repeated and continuous transactions may make it otherwise.¹⁷ The legislature cannot exercise its police power under the guise of general welfare so as to interfere with the sale by an individual of his own property when the acquiring and possession of such property is not contrary to law.¹⁸ It is, therefore, generally held that a private sale of stock without profit or commission is not a violation of the Blue Sky Law.¹⁹ A corporation, however, selling its own stock is within the Michigan Act, which in its penal provision refers only to “investment companies” but in an earlier section provides that any person or corporation which sells stock shall be considered, for the purpose of the act, an investment company.²⁰

If a blue sky law, providing, in effect, that any owner of any security who is not the issuer or an underwriter thereof, who sells or exchanges the same for his own account, is excepted from the provisions of the act requiring a broker's permit, provided that such sale or exchange is not made in the course of repeated and successive transactions of like or similar character by him, is a proper exercise by the legislature of its constitutional power, then this situation may and would inevitably arise: A and B are each the owner of \$25,000 in par value of bonds, stocks or other securities; each is desirous of disposing of these securities. A may be

¹⁶ *Cannon v. Farmers' Union Grain Agency*, 103 Ore. 26, 202 Pac. 725; *Kirk v. Farmers' Union Grain Agency*, 103 Ore. 43, 202 Pac. 731; *State v. Summerland*, 150 Minn. 266, 185 N. W. 255; *Gutterson v. Pearson*, 152 Minn. 482, 189 N. W. 458; *People v. Weese*, 225 Mich. 480, 196 N. W. 516; *State v. Farr* (Mo. App.), 255 S. W. 1069; *White v. Thwing*, 300 Mo. 680, 256 S. W. 216; *Goddard v. General Reduction & Chemical Co.*, 57 Utah 180, 193 Pac. 1103; *State v. Brady*, 194 Iowa 545, 188 N. W. 669; *Hornaday v. State* (Okla. Cr.), 208 Pac. 228.

¹⁷ *Edward v. Ioor*, 205 Mich. 617, 172 N. W. 620, 15 A. L. R. 256.

¹⁸ *People v. Pace*, 73 Cal. App. 548, 238 Pac. 1089.

¹⁹ *Dows v. Schuh*, 206 Mich. 133, 172 N. W. 418; *Dursum v. Benedict*, 209 Mich. 115, 176 N. W. 459; *Goddard v. General Reduction & Chemical Co.*, 57 Utah 180, 193 Pac. 1103; *State v. Brady*, 194 Iowa 545, 188 N. W. 669; *Hornaday v. State* (Okla. Cr.), 208 Pac. 228.

²⁰ *Farm Products Co. v. Jordan*, 229 Mich. 235, 201 N. W. 198. See, also, *Hamlin County Livestock Sales Pavilion Co. v. Karlstad*, 48 S. D. 82, 202 N. W. 141; *National Bank v. Price*, 65 Utah 57, 234 Pac. 231.

fortunate in having a banking or other connection to which he is able to dispose of all of his securities in one sale or transaction. In such event he would not be required to file an application for a broker's permit, or go to the trouble and expense of furnishing a bond. Moreover, he might be a man of most unsavory business reputation and stand charged with, or even convicted of, all the crimes enumerated in the decalogue. Without any hindrance or control, the provision of the act permits him to exercise his inalienable right to thus dispose of his own property.

B, for reasons that might in no way reflect upon his business integrity, honesty, or good character may not have such a business connection or acquaintance that would enable him to dispose of all of his securities in one sale, but he might be able to make satisfactory disposition of them to two or more purchasers in as many different transactions. After he has made the first sale, he cannot make a second or succeeding sale until he has first filed his application for a broker's permit, posted a bond, paid the corporation commissioner's fee, and awaited a sufficient time to enable the commissioner to ascertain whether his business reputation is good or bad. If the commissioner is satisfied with his business reputation, after waiting an indefinite period—as in this particular act there is no time limit provided within which the commissioner shall issue the permit—a permit is issued and B is then enabled legally to dispose of the balance of his securities. If his securities were of a character that fluctuated on the market, this delay may mean a considerable loss to him, which A is not compelled to suffer. If, on the other hand, the commissioner should find the business reputation of B unsatisfactory, although nowhere near as unsavory as the reputation of A, the broker's permit is denied and B is thus prevented from disposing of the balance of his securities.

Manifestly, any act of the legislature which creates such a situation is void as being in direct contravention of the inalienable right of every citizen to enjoy, acquire, possess and protect his property, as guaranteed by the Federal constitution and also the constitution of the state.^{20a}

§ 308. Validity of Sale Made in Violation of Act.—A sale of shares in an association which has failed to comply with the Blue

^{20a} *People v. Pace*, 73 Cal. App. 548, 238 Pac. 1089.

St. Law, and obtain a permit for the sale of such shares, is unlawful and unauthorized, and has been held to be null and void.¹ And an executory contract for such a sale cannot be enforced.² Nor can the corporation recover in an action against the subscriber thereto for his subscription.³ And in an action on notes given for the purchase price of securities, it is a good defense that they were sold in violation of the statute.⁴ A note given for such shares, however, is not void because of a failure of the company to comply with the act, but voidable only, and is enforceable in the hands of an innocent purchaser taking before maturity.⁵ But where a note is given for securities requiring a permit for their sale, which permit has not been obtained, the title of the payee is defective, and if the plaintiff, seeking to recover on such a note, participates in the making of the sale, he is not entitled to the rights of an innocent holder merely because he does not know that no permit to sell has been obtained.⁶

§ 309. Rights as Between Violators of Blue Sky Law.—

While it is generally conceded that relief will not be given by equity to a purchaser of corporate securities who is equally guilty with the seller in an attempt to circumvent a Blue Sky Law,⁷ a person who promptly abandons an enterprise created for the purpose of abating the act, and rescinds the contract before it is consummated, is not *in pari delicto*, and is entitled to relief.⁸ Nor is a purchaser of shares in an association *in pari delicto* with the organizers of such association, which failed to comply with the provisions of the act, where, at the time he brought suit there had been only part performance of his contract of sale, namely, the payment of the money.⁹ Where

¹ Landwehr v. Lingenfelder (Mo. App.), 249 S. W. 723; Creasy Corp. v. Enz Bros. Co., 177 Wis. 49, 187 N. W. 666; Schmidt v. Stortz, 208 Mo. App. 439, 236 S. W. 694; Stewart v. Brady, 300 Ill. 425, 133 N. E. 310; Domenigoni v. Imperial Live Stock & Mortgage Co., 189 Cal. 467, 209 Pac. 36.

² Reno v. American Ice Machine Co., 72 Cal. App. 409, 237 Pac. 784.

³ Knechtel Motor Co. v. Worden, 2 West. Week. Rep. (Can.) 154.

⁴ Karl v. Maloney, 111 Kan. 93, 205 Pac. 1037.

⁵ Evans Co. v. Bryson, 146 Ga. 278, 91 S. E. 71; First National Bank v. C. W. Leeton & Bros., 131 Miss. 324, 95 So. 445.

⁶ Weisendanger v. Lind, 114 Kan. 523, 220 Pac. 263.

⁷ Domenigoni v. Imperial Livestock and Mortgage Co., 189 Cal. 467, 209 Pac. 36.

⁸ Schmidt v. Stortz, 208 Mo. App. 439, 236 S. W. 694.

⁹ Landwehr v. Lingenfelder (Mo. App.), 249 S. W. 723.

a purchaser of stock sold in violation of a Blue Sky Law is not *in pari delicto*, he may set up the illegality of the transaction in defense of a note for the price.¹⁰ Or he may bring an action without tendering back the securities bought, though judgment should not be entered until they are returned.¹¹ In Michigan, apparently a tender is necessary.¹² Though notes given for stock sold in violation of a Blue Sky Law are good in the hands of a *bona fide* purchaser, where the act does not expressly declare otherwise,¹³ they are voidable in the hands of one not a *bona fide* purchaser.¹⁴

One who aids and abets others in a sale in violation of the act is liable for the entire price, on the ground that all aiding in the perpetration of a misdemeanor are principals.¹⁵ Though the Michigan act penalizes only "dealers" and "investment companies," one who is not a dealer is liable as an aider and abettor.¹⁶ While subsequent participation in the conduct of an association has been held not to estop a purchaser of stock illegally sold to urge the illegality of the sale in an action for the price of the stock,¹⁷ active participation in corporate affairs by one who purchases stock sold in violation of the act has been held to estop him to deny as against creditors that he is a stockholder.¹⁸

§ 310. Permit to Sell Securities.—The permit is conclusive as to the right to sell securities, if the documents prerequisite to its issuance have been filed with the proper officer, but not if they have not been.¹⁹

¹⁰ Reilly v. Clyne, 27 Ariz. 432, 234 Pac. 35.

¹¹ Kenalos v. H. V. Greene Co. (N. H.), 128 Atl. 335.

¹² Thompson v. Cain, 226 Mich. 609, 198 N. W. 249.

¹³ City National Bank v. De Baum, 166 Ark. 18, 265 S. W. 648; Planters Bank & T. Co. v. Felton, 188 N. C. 384, 124 S. E. 849; Frazier v. Lafferty, 150 Tenn. 105, 263 S. W. 978; National Bank v. Price, 65 Utah 57, 234 Pac. 231.

¹⁴ Ashley & Rumelin, Bankers, v. Brady, 41 Idaho 160, 238 Pac. 315; Farm Products Co. v. Jordan, 229 Mich. 235, 201 N. W. 198; Grace & Co. v. Strickland, 188 N. C. 369, 124 S. E. 856, 35 A. L. R. 1296.

¹⁵ Thompson v. Cain, 226 Mich. 609, 198 N. W. 249.

¹⁶ Noll v. Wood, 231 Mich. 224, 203 N. W. 848.

¹⁷ Reilly v. Clyne, 27 Ariz. 432, 234 Pac. 35.

¹⁸ Winfred Farmers' Co. v. Smith, 47 S. D. 498, 199 N. W. 477.

¹⁹ Dixie Rubber Co. v. McBee, 150 Tenn. 53, 262 S. W. 32.

§ 311. **Powers and Duties of Blue Sky Commissioners.**—In some states it is provided by statute that the commissioner of corporations shall at all times have the power to administer oaths and to make an examination or investigation of the books, records, accounts, and other papers, and of the business of any company, broker, or agent permitted or authorized by him to sell securities, to make dividends, to create debts, to divide, withdraw, or pay to the stockholders, or any of them, any part of its capital stock, or to increase or reduce its capital stock.²⁰ The discretion of the commissioner to grant or refuse a license is qualified by his duty, and is subject to review, and in determining the validity of the law, the court must accord to him a proper sense of duty, and presume that the functions entrusted to him will be executed for the public interest, and not wantonly or arbitrarily to deny a license to or take away a license from a reputable dealer.¹ Where the commission is authorized to make an investigation into the affairs of the “user of securities” at any time before or after the grant of a license to sell, the return of the license before the expiration of its term does not oust the commission of jurisdiction to investigate.²

²⁰ See California Stats. 1917, p. 673.

¹ *Hall v. Geiger-Jones Co.*, 242 U. S. 539, A. C. 1917C 643, L. R. A. 1917F 514, 61 L. Ed. 480, 37 S. Ct. 217; *Hall v. Coultrap*, 242 U. S. 539, 61 L. Ed. 480, 37 S. Ct. 217; *Hall v. Rose*, 242 U. S. 539, 61 L. Ed. 480, 37 S. Ct. 217.

² *Motor Finance & Guaranty Corp. v. Georgia Securities Commission*, 158 Ga. 75, 122 S. E. 782.

CHAPTER XXIV.

BLUE SKY LAWS (Continued).

- § 312. Alabama—Blue Sky Law.
- § 313. Arizona—Blue Sky Law.
- § 314. Arizona—Suggestions to Applicants for Investment Company Permits.
- § 315. Arkansas—Blue Sky Law.
- § 316. California—Blue Sky Law.
- § 317. Colorado—Blue Sky Law.
- § 318. Connecticut—Blue Sky Law.
- § 319. Florida—Blue Sky Law.
- § 320. Georgia—Blue Sky Law.
- § 321. Hawaii—Blue Sky Law.
- § 322. Idaho—Blue Sky Law.
- § 323. Idaho—Requirements to Be Followed in Making Application Under Blue Sky Law.
- § 324. Illinois—Blue Sky Law.
- § 325. Indiana—Blue Sky Law.
- § 326. Iowa—Blue Sky Law.
- § 327. Kansas—Blue Sky Law.
- § 328. Kentucky—Blue Sky Law.
- § 329. Louisiana—Blue Sky Law.
- § 330. Maine—Blue Sky Law.
- § 331. Maryland—Blue Sky Law.
- § 332. Massachusetts—Blue Sky Law.
- § 333. Michigan—Blue Sky Law.
- § 334. Minnesota—Blue Sky Law.
- § 335. Mississippi—Blue Sky Law.
- § 336. Missouri—Blue Sky Law.
- § 337. Montana—Blue Sky Law.
- § 338. Montana—Rulings of the Investment Commissioner.
- § 339. Nebraska—Blue Sky Law.
- § 340. New Hampshire—Blue Sky Law.
- § 341. New Jersey—Blue Sky Law.
- § 342. New Mexico—Blue Sky Law.
- § 343. New York—Blue Sky Law.
- § 344. North Carolina—Blue Sky Law.
- § 345. North Dakota—Blue Sky Law.
- § 346. Ohio—Blue Sky Law.
- § 347. Oklahoma—Blue Sky Law.
- § 348. Oregon—Blue Sky Law.
- § 349. Pennsylvania—Blue Sky Law.
- § 350. Philippine Islands—Blue Sky Law.
- § 351. Rhode Island—Blue Sky Law.

- § 352. South Carolina—Blue Sky Law.
- § 353. South Dakota—Blue Sky Law.
- § 354. Tennessee—Blue Sky Law.
- § 355. Texas—Blue Sky Law.
- § 356. Utah—Blue Sky Law.
- § 357. Vermont—Blue Sky Law.
- § 358. Virginia—Blue Sky Law.
- § 359. Washington—Blue Sky Law.
- § 360. West Virginia—Blue Sky Law.
- § 361. Wisconsin—Blue Sky Law.
- § 362. Wyoming—Blue Sky Law.

§ 312. **Alabama—Blue Sky Law.**—In Alabama, the application for authority to sell securities is made to the state securities commission. No security, not exempted under the Blue Sky Law, shall be sold either directly or indirectly to any person within the state of Alabama, unless and until said securities shall have been admitted to record and recorded in the register of qualified securities. The commission shall receive and act upon applications to have securities admitted to record in such register of qualified securities; and the commission may from time to time prescribe forms on which applications may be submitted. All applications shall be in writing and shall be signed, dated and sworn to and shall thereafter be filed with the commission. Such applications may be made to and filed with the commission either by the issuer of the securities in question, or by any person desiring to sell the same in the state of Alabama.

Each applicant for registration of securities must at the time of filing its application pay to the commission a filing fee of twenty-five dollars plus the sum of fifty cents for each one thousand dollars par value of each issue of securities for which application for registration is filed. If any of such securities have no par value, the price at which the applicant proposes to sell and issue the same to the public shall be deemed the par value thereof for the purpose of computing the fee to be paid by such applicant upon the filing of such application. No securities shall be admitted to record in the register of qualified securities until the applicant or applicants therefor have entered into a bond for not less than one thousand dollars, nor more than one hundred thousand dollars, and in no event for more than ten per centum of the aggregate selling price of the securities to be admitted to record. The

amount of said bond shall be fixed by the commission in its order admitting said securities to record. Said bond shall be payable to the state of Alabama and be conditioned upon the truth of the statements set forth in the application filed with the commission and of the evidence and other probative matter offered in connection with such application to the state official or officials, and upon compliance by said applicant and his agents with the provisions of the Blue Sky Law. Said bond shall be made with a surety company authorized to do business in the state of Alabama, and shall be filed with and approved by the president of the commission. Any person who shall have a right of action against said bond shall bring suit thereon within two years after such right of action shall have accrued, and not thereafter. One or more recoveries upon such bond shall not vitiate the same; but no recoveries thereon shall ever exceed the full amount of such bond. Upon suits being filed in excess of the amount of such bond, the president of the commission shall require a new bond; and if same is not given within thirty days thereafter, he shall cancel the registration of the securities involved.

In granting to an applicant the privilege of offering securities to the public in the state of Alabama, the commission may impose such reasonable conditions, either precedent or concurrent thereto, as in the judgment of the commission may be necessary or advisable. As one of such conditions precedent, the commission shall require that any securities of the issuer, which have been or are to be issued for property or assets, either tangible or intangible, shall be deposited in escrow, under such terms as the commission may prescribe in each case, to the end that the owners of the securities, so issued in payment for property and so placed in escrow, shall, in case of the dissolution or insolvency of the issuer, not participate in the assets of such issuers until after the owners of all other securities have been paid in full. The securities deposited under such escrow agreement shall be released from such escrow agreement only at such time as the commission may deem just and equitable.

Every person who is a non-resident of the state of Alabama, before availing himself of any of the provisions of the Blue Sky Law, must file his written consent to service of process on the attorney general.

§ 313. **Arizona—Blue Sky Law.**—The Arizona law provides that every corporation, every copartnership or company and every association (other than state and national banks, and corporations not organized for pecuniary profit) organized, or which shall be organized in this state, whether incorporated or unincorporated, which shall sell or negotiate for the sale of any stocks, bonds or other securities of any kind or character other than bonds of the United States or other bonds, must before offering or attempting to sell, file in the office of the corporation commission a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, bonds, or other instruments which it proposes to make with, or to sell to, its subscribers; a statement which shall show the name and location of the investment company, and an itemized account of its actual financial condition, and the amount of the property owned by it, and its liabilities, and such other information touching its affairs as the corporation commissioner may require.

The law then provides: "It shall be the duty of the corporation commission to examine the statements and documents so filed, and if said corporation commission shall deem it advisable it shall make or have made a detailed examination of such investment company's affairs; such examination shall be at the expense of such investment company, as hereinafter provided; and if it finds that said investment company is solvent, that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contract contains and provides for a fair, just and equitable plan for the transaction of business, and in its judgment promises a fair return on stocks, bonds, or other securities by it offered for sale, the corporation commission shall issue to such investment company a statement reciting that such company has complied with the provisions of this chapter, that detailed information in regard to the company and its securities is on file in the office of the corporation commission for public inspection and information, that such investment company is permitted to do business in this state, and such statement shall also recite in bold type that the corporation commission in no wise recommends the stocks, bonds or other securities to be offered for sale by such investment company. But if said corporation commission advises that such articles of incorporation or association,

charter, constitution and by-laws, plan of business or proposed contract contain any provisions that are unfair, unjust, inequitable or oppressive to any class of contributors, or if it decides from its examination of the affairs of said investment company that the said investment company is not solvent and does not intend to do a fair and honest business and in its judgment does not promise a fair return of the stocks, bonds, contracts or other securities by said company offered for sale, then the corporation commission shall notify such persons, etc., in writing of its findings, and it shall be unlawful for such company to do any further business in the state until it shall so change its constitution and by-laws, articles of incorporation, or association, its proposed plan of business, and proposed contract, and its general financial condition, in such manner as to satisfy the corporation commission that it is solvent, and its articles of incorporation or association, its constitution and by-laws, its proposed plan of business, and proposed contract, provide for a fair, just and equitable plan for the transaction of business and does, in the judgment of the corporation commission, promise a fair return on stocks, bonds, contracts or other securities by such investment company offered for sale; provided, that all expenses paid or incurred and all fees or charges received or collected for any examination made under the provisions of this section of this chapter shall be reported in detail by the corporation commission and a full report and record thereof made in detail."

Every foreign investment company must also file its written consent to service of process on the designated agent of such company.

§ 314. Arizona—Suggestions to Applicants for Investment Company Permits.—In making application for permission to issue or sell securities follow procedure indicated in paragraph 2260, chapter 9, title 9, Revised Statutes of Arizona, 1913.

Among matters which should be recited in, or accompany the application are:

1. Fees are for filing application and must accompany same before any official action may be taken on application. The fees are paid for the work of checking the records and filings of the

applicant or applicant's company and no return of fees can be made if permit is not granted.

2. State correct full name of the company, giving authorized place of business.

3. Date of incorporation. State in which incorporated.

4. Amount of capital stock, total number of shares, par value, and whether common or preferred or both.

5. Give a general statement of nature and plans of company's business.

6. If a mining or oil company, give names of properties held or owned, district, county and state in which located. There must be submitted evidence of a clear chain of title to property or claims, with annual proof of labor or in the case of leases evidence of the applicant's interest therein. Deeds, contracts, bills of sale or leases must be verified by the signature and seal of the county recorder or other proper public official.

7. A company whose assets are, or include other real estate such as commercial, ranch or similar property or merchandise, equipment, material or chattels should give full description and location of all such property together with evidence of title or ownership thereof.

8. If an engineering report has been made on properties or holdings of the company, make such report a part of the application. If no report has been made, so state.

9. Submit a list showing in detail the exact ownership of the total capital stock on the date application is made, also amount of stock held in the treasury of the company.

10. If any options or contracts have been given on stock attach correct copy to application. Also attach verified copies of all contracts or agreements that have been entered into that relate to the affairs of the company. If there be none in existence and none contemplated, so state.

11. Give correct list of securities that have previously been issued and consideration received for each issue. If none, so state.

12. If applicant is a corporation, it shall also file a copy of all minutes of any proceedings of its directors, stockholders or members relating to or affecting the issue of securities.

13. Where patents for inventions are involved submit a verified copy of file wrapper of the proceedings in the United States

Patent Office as far as they have proceeded with reference to all similar patents. File evidence verified by the proper officers of the United States Patent Office showing patents or interest in patents held in the name of the applicant.

14. Give a condensed statement of liabilities and assets and a full trial balance sheet of same date.

15. State amount of money actually required for development of the entire enterprise, so far as can be anticipated, segregating same into items of expenditure.

16. Give names and addresses of officers and directors, showing the actual investment of each in the company and statement of business experience of those who will be actively in charge, together with salaries paid or to be paid officers or directors. If no salaries are paid or to be paid, so state.

17. Attach a blank certificate of the stock or other securities proposed to be sold or issued.

18. Attach a true copy of subscription blank and all other blanks used in connection with the sale of stock or securities.

19. Attach a complete and verified copy of the company's by-laws.

20. Give five references as to the president and five as to the secretary of the company. If a going concern give five references as to the company.

21. State definitely the amount and kind of securities proposed to be issued and the price, par value or otherwise at which it is desired to sell same. In this clause set a definite price at which stock is to be sold. Permits cannot be granted authorizing the sale of stock to the public at different prices.

22. State brokerage or commission paid on previous sales and proposed to be paid on future sales and the facts showing the necessity for the payment of such commission or brokerage on future sales.

23. State definitely in what state you have applied for permits for authority to issue securities of any kind. State from what states permits have been granted and enclose a sworn copy of the permit so issued. If company has been denied permission to issue securities in any state, set forth clearly reasons for denial.

24. State name and address of person to whom all correspondence may be addressed.

25. The application and all accompanying data must be properly verified under oath by the president and secretary of the company.

In making out application, number the various statements of facts as above. The application and all accompanying data must be properly verified under oath by the president and secretary of the company. Ordinarily, two weeks are required to investigate, review and record applications. A longer period may elapse before application can be passed upon. Applications in any form other than herein prescribed will not be considered.

§ 315. Arkansas—Blue Sky Law.—Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatsoever in the state of Arkansas, any contracts, stocks, bonds, or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the bank commissioner a statement showing in full detail the plan upon which it proposes to transact business, a copy of all contracts, stocks, bonds, or other instruments which it proposes to make with, or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisements of its sale of stocks, bonds or other securities, which statement shall also show the name and location and main office of the investment company; the names and addresses of its officers, and an itemized account of its financial condition and of its assets and liabilities, and such other information touching its condition and affairs as the bank commissioner may require.

If such investment company shall be a copartnership or an unincorporated association, it shall also file with the bank commissioner a copy of its articles of copartnership or association, and all other papers pertaining to its organization. If it be a corporation organized under the laws of Arkansas, it shall also file with the bank commissioner a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the bank commissioner a copy of the laws of the state, or territory, or government, under which it exists or is incorporated, and also a copy of its charter

and the certificate of the proper officer of such state showing that it is authorized to transact business there; and also copies of its constitution and by-laws and of all amendments of any of the above mentioned instruments which have been made, and all other papers pertaining to its organization.

Every foreign corporation must also file its written consent to service of process on the bank commissioner.

Every application must be accompanied by a filing fee of \$10. In the event the application is approved the applicant company must pay an additional amount sufficient to equal \$1 for every \$1000 of securities sought to be sold within the state of Arkansas; provided that such fee shall in no case be more than \$100. In the event the application is denied the \$10 filing fee is retained.

§ 316. California—Blue Sky Law.—No company shall sell or offer for sale, negotiate for the sale of, or take subscriptions for any security of its own issue until it shall have first applied for and secured from the commissioner a permit authorizing it so to do. The application shall be in writing, shall be verified as provided in the Code of Civil Procedure for the verification of pleadings, and shall be filed in the office of the corporation commissioner. In such application the applicant shall set forth the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its assets and liabilities, a detailed statement of the plan upon which it proposes to transact business, a copy of any security it proposes to issue, a copy of any contract it proposes to make concerning the same, a copy of any prospectus or advertisement, or other description of such securities, then prepared by or for it for distribution or publication, and such additional information concerning the company, its condition and affairs as the commissioner may require. If the applicant is a partnership or an unincorporated association or joint stock company, it shall file with its application a copy of its articles of partnership or association and all other papers pertaining to its organization. If the applicant is a trustee, it shall file with its application a copy of all instruments by which the trust is created and in which it is accepted, acknowledged, or declared. If the applicant is a corporation, it shall file with its application a copy of all minutes of any proceedings of its

directors or stockholders or members relating to or affecting the issue of such securities, and also a copy of its articles of incorporation and of its by-laws and of any amendments thereto. If the applicant is a corporation or association organized under the laws of any other state, territory, or government, it shall also file with its application a certificate, executed by the proper officer of such state, territory, or government not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in such state, territory, or government; and also, in such form, as the commissioner may prescribe, its written instrument, irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it may be served, with the same effect as if said corporation or association were organized or created under the laws of the state of California and had been lawfully served with process therein.

The filing fees for any application for a permit to issue securities are ten dollars, plus one twentieth of one per cent of the amount of any excess of the aggregate value of the securities sought to be issued over twenty thousand dollars and not exceeding fifty thousand dollars; one twenty-fifth of one per cent of such amount in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; one fiftieth of one per cent of such amount in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; and one one-hundredth of one per cent of such amount in excess of five hundred thousand dollars. The value of such securities shall be deemed to be their par or face value, if they have a par or face value; otherwise, the price at which the company proposes to sell or issue the same, or the value, as alleged in the application, of the consideration (if other than money) to be received in exchange therefor.

§ 317. Colorado—Blue Sky Law.—In Colorado, the “issuer,” as he is termed, must, within twelve months next before selling or offering for sale, any security or securities, through any agency in said state, issue a prospectus, which shall contain, in addition to such other matters as the issuer desires to insert therein, the following:

(a) The name of the issuer with the address of his, or its prin-

cipal and head office, both within and without the state of Colorado, the date when the issuer commenced business and the date of the prospectus.

(b) If the issuer is an individual, his occupation; if the issuer is a partnership, the individual names of the partners; if the issuer is not an individual or a partnership, the particulars of the act or instrument under which the issuer is constituted and operating, or a description of the organization.

(c) The location, or the proposed location, of the undertaking of the issuer.

(d) If the issuer is other than an individual or partnership, the names, addresses and occupations of the directors, trustees, principal officers, proposed principal officers or other persons acting in similar capacities.

(e) The nature of the business or proposed business of the issuer, and if the issuer is a corporation, a concise statement of its powers and objects.

(f) If the issuer is other than an individual or partnership, the authorized capital, the issued capital, the paid-up capital, the amount and particulars of all securities which are issued or authorized and are already or may thereafter become a charge on the assets and undertaking of the issuer.

(g) The number and classes of securities into which the capital is divided and the par value of securities in each class, description of the respective voting rights, preferences, rights to dividends, profits or capital of each class with respect to each other class.

(h) If the issuer is other than an individual or partnership, the manner in which the issuer's capital has been paid in, whether in cash or property, or by any other consideration; the amount paid in cash, in property and for other consideration, stated separately, with a description of the character and value of the property, and consideration other than money, received by the issuer for such payments.

(i) The amount of the proposed issue and details of the principal purposes and uses to which the proceeds of the issue will be applied.

(j) If the issuer has not been carrying on business for more than three years, the amount or the estimated amount of the issuer's preliminary and organization expenses and the names and

addresses of, and the amount paid or payable to, any person, in consideration of the organization or promotion of the undertaking of the issuer, and/or for the sale of the securities, with particulars of the services rendered by each such person.

(k) If the issuer has been carrying on business for more than three years, the name and address of, and the amounts paid or payable to, any person in consideration of the issue, sale or offering for sale of the securities, and the particulars of the services rendered by each such person.

(l) The amount and description of securities issued or proposed to be issued as fully paid, for any consideration other than cash, and the particulars of such consideration.

(m) The names and addresses of the vendors of any property purchased or acquired or proposed to be purchased or acquired which is to be, or has been, paid for, wholly or partly, out of such issue or the proceeds thereof, or the purchase or acquisition of which has not been completed at the date of the statement.

(n) The amount, if any, paid or payable, as purchase money, in cash, securities or otherwise, for any property mentioned in the next preceding clause, specifying the amount, if any, paid or payable for good will, patent right, copyright, trademark, process or other intangible asset, and the nature of the interest of the issuer in such property, stating whether it is absolute, or conditional ownerships under lease, option to purchase, or license of occupation, and where there is more than one vendor, or the issuer is a sub-purchaser, the amount payable to each vendor, provided that members of a firm shall not be regarded as separate vendors.

(o) Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the issuer, or, where the interest of such director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person, either to induce him to become or to qualify him as a director, or otherwise, for services rendered by him or the firm in connection with the promotion or formation of the issuer.

Such prospectus shall be signed by the issuer, by the principal officers of the issuer and by the directors or trustees of the issuer,

proposed principal officers and directors or trustees of the issuer and all persons acting in similar capacities. Signatures printed upon such prospectuses shall be presumed to be so printed by authority of the person whose signature is affixed, but the burden of proof in case such authority shall be denied, shall be upon the party asserting the same. The affixing of any signature without authority of the purported signer shall constitute a violation of the Securities Act. Two copies of each such prospectus issued shall be filed with the secretary of state, and if the issuer be a non-resident of the state of Colorado, he shall simultaneously file a certificate designating the secretary of state as agent of such issuer for the service of process. The secretary of state shall charge and collect in each instance a filing fee of ten dollars and if the statements contained in the prospectus shall conform to the requirements of the aforesaid act, he shall issue a receipt in the name of the issuer filing such statement.

If any sale, advertisement for sale, or effort to sell any security affected by the provisions of the act shall continue for more than twelve months, it shall be obligatory upon the issuer to prepare a new prospectus according to the then existing facts and again to file the same.

§ 318. Connecticut — Blue Sky Law. — Connecticut has no actual "Blue Sky Law," but has a "General Corporation Law," which requires that no corporation organized under any special or general law of the state of Connecticut or any other state or territory shall engage in selling or negotiating any choses in action, made, issued or guaranteed, by any person or investment company chartered by or organized under the laws of Connecticut or any other state or territory, payment of which is secured by mortgages on real estate situated in any other state or territory, or by pledges of such mortgages, until it has procured from the state treasurer a certificate of authority so to act. Such certificates shall contain the names of the persons who are to be authorized to act in this state as the agents of said corporation, and shall continue in force for one year and shall authorize the persons named therein to sell or negotiate such choses in action, payment of which is secured by mortgage on real estate situated in any other state or territory, or is secured by a pledge of such mortgages or both, during said

period of one year; provided no such certificate shall be so issued to any such corporation whose stock is not taxed under the laws of this state, until such corporation shall have executed and filed with the treasurer of the state a bond with satisfactory surety in a sum not less than five hundred dollars nor more than five thousand dollars, as said treasurer shall decide and approve, conditioned that said corporation shall make the returns and pay the taxes required by law.

§ 319. Florida—Blue Sky Law.—Before attempting to sell or offering for sale any stocks, bonds or other securities of any kind or character to any person or persons within the state of Florida, every investment company, domestic or foreign, shall file in the office of the comptroller of the state of Florida, together with a filing fee of five dollars, the following documents, to wit:

A statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, bonds, stocks or other instruments which shall show the name and location of the investment company; an itemized account of its actual financial standing, showing the amount, character and location of its property and its liabilities; and such other information touching its affairs as said comptroller may require. It shall also file with the comptroller a copy of its articles of incorporation, constitution and by-laws and all other papers pertaining to its organization, all of which above papers and documents shall be verified by the oath of the president of such corporation, or by some duly authorized officer of same.

Every foreign investment company must also file its written consent to service of process on the comptroller.

§ 320. Georgia—Blue Sky Law.—Except as otherwise provided in "The Georgia Securities Law," no dealer shall, within the state of Georgia, dispose or offer to dispose of any stocks, bonds, debentures, certificates of participation, or other similar instrument (all hereinafter termed "securities"), evidencing title to or interest in property issued or executed by any private or quasi-public corporation, copartnership, or association (except corporations not for profit), without first being licensed so to do.

For the purpose of this act, securities are divided into four classes, as follows:

(1) Securities, the inherent qualities of which assure their sale and disposition without the perpetration of fraud, which shall be known as securities in class "A."

(2) Securities, the inherent qualities of which, or in the nature of one or of both parties to the sale thereof, assure the sale and disposition without the perpetration of fraud, which shall be known as securities in class "B."

(3) Securities based on established incomes or on assets, the fair market value of which in the judgment of the commission gives the investor a reasonable margin of safety, shall be known as securities in class "C."

(4) Securities based on prospective incomes which shall be known as securities in class "D."

Every applicant, if not a resident of, or not organized under the laws of the state of Georgia, shall at the same time, and before any license shall issue, file with the securities commission a duly executed written instrument, irrevocably consenting that any action brought against such applicant, arising out of and founded upon the sale or disposal of such securities by him or his agents, may be brought in any county in the state where such securities were sold; and shall, at the same time, when the applicant is not a resident of, or was not organized under the laws of the state of Georgia, file with said commission a written instrument as power of attorney, duly signed and sealed, appointing and authorizing some person, who shall be a resident of this state, to acknowledge or receive service of process, and upon whom process may be served.

§ 321. Hawaii—Blue Sky Law.—Every foreign investment company before selling or offering for sale any security of any kind or character within the territory of Hawaii shall file with its application for permission to do so, the following facts and particulars:

(1) A certified copy of the law or laws under which it is organized or incorporated, and all amendments thereto;

(2) A certified copy of its charter, articles of incorporation,

articles of association or articles of copartnership, and all amendments thereto;

(3) An itemized statement in such form and detail as the treasurer of the territory may from time to time prescribe, of its financial condition and of the amount and character of its assets, a detailed statement of the plan upon which it proposes to transact business, a copy of any security it proposes to issue, a copy of any contract which it proposes to make concerning the same, a copy of any prospectus or advertisement or other description of such property then prepared by or for it for distribution or publication and such additional information as the treasurer may require.

(4) If the applicant be a corporation, an incorporated or unincorporated association or a joint stock company, the names and addresses of its officers, of the members of its board of directors and the number of shares in such corporation, incorporated or unincorporated association or joint stock company owned by each of such officers or directors, and if it be a copartnership, the name and address of the partners, together with a statement of the proportionate shares or interest owned by each of such copartners in said copartnership.

(5) The purpose for which the applicant was organized and the general nature of the business in which it is engaged or in which it proposes to engage.

(6) The capitalization of the applicant, including, if the applicant be a corporation, an incorporated or unincorporated association or joint stock company the authorized amount of its capital stock, the number and classes of shares into which its capital stock is divided, a description of the respective voting rights, preference rights to dividends, profits or capital of each class with respect to each other class, the amount of capital stock of each class issued or included in the shares of stock to be offered, the amount of the funded debt, with a brief description of the date, maturity and character of such debt, and the security, if any, therefor, if the applicant is a copartnership, a statement of the amount and character of its assets and of the relative ownership of said assets by each member of said copartnership, together with a description of the liabilities of said copartnership, including a brief description of the date of maturity and character of any debt of said copartnership and the security if any therefor.

(7) The manner in which the capital of the applicant has been paid in, whether in cash or property or by any other consideration, the amount paid in cash, in property and other consideration received by the applicant for such payments.

(8) The purpose for which the securities proposed to be offered for sale within the territory were issued or are to be issued by the applicant, the consideration received or to be received by it therefor, the amount of all commissions and other considerations paid or to be paid by it for its account for or in respect of the issue, sale or offer of the said shares, and the use proposed to be made of the consideration realized from the sale of the said shares within the territory.

(9) The name and addresses of the vendors (stating the relation of such vendor to the applicant if any) of any property rights or interests which shall have been, or are to be purchased or acquired by the applicant and paid for wholly or in part by said securities, or the proceeds of the sale thereof, a description of the said property rights or interests, and the certificate of two disinterested persons stating the fair cash value of such property rights and interests.

(10) The names and addresses of all accountants who have examined the books or audited the accounts of the applicant within the period of two years prior to the filing of the said statement.

(11) A statement of the fact that the execution of the statement on behalf of the applicant has been duly authorized by the applicant and a certified copy of the resolution or vote authorizing the same.

Every foreign corporation must also file with its application its written instrument irrevocably appointing the treasurer or his successors in office its true and lawful attorney, upon whom all process in any action may be served.

Each foreign investment company shall, at the time of filing its application for permission as aforesaid, pay the filing fee, which fee shall be five dollars (\$5), if the par or face value of the said securities proposed to be sold amounts to twenty-five thousand dollars (\$25,000) or less; ten dollars (\$10) if the par or face value of said securities amounts to over twenty-five thousand dollars (\$25,000), and not over fifty thousand dollars (\$50,000); fifteen

dollars (\$15) if the par or face value of said security or securities amounts to over fifty thousand dollars (\$50,000), and not over seventy-five thousand dollars (\$75,000); twenty dollars (\$20) if the par or face value of said security or securities amounts to over seventy-five thousand dollars (\$75,000) and not over one hundred thousand dollars (\$100,000); and twenty-five dollars (\$25) if the par or face value of said securities amounts to over one hundred thousand dollars (\$100,000).

§ 322. **Idaho—Blue Sky Law.**—Before offering or attempting to sell any stocks, bonds or other securities of any kind or character other than those specifically exempted, to any person or persons, or transacting any business whatever in the state of Idaho, excepting that of preparing the documents hereinafter required, every such investment company, domestic or foreign, shall file in the office of the department of finance together with a filing fee of twenty-five dollars (\$25) for foreign companies and five dollars (\$5) for domestic companies, the following documents, to wit: A statement showing in full detail the plan upon which it proposes to transact business. A copy of all contracts, bonds, or other instruments which it proposes to make with or sell to its contributors. A statement which shall show the name and location of the investment company and an itemized account of actual financial condition, and the amount of its property and liabilities, and such other information, touching its affairs as said department of finance may require. If such investment company shall be a copartnership or an unincorporated association, it shall also file with the department of finance a copy of its articles of copartnership or association, and all other purposes pertaining to its organization, and if it be a corporation organized under the laws of Idaho it shall also file with the department a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the said department a copy of the laws of such state, territory or government under which it exists or is incorporated, and also a copy of its charter, articles of incorporation, constitution and by-laws and all amendments thereof which have been made and all other papers pertaining to its organization.

Every foreign investment company must also file its written consent to service of process on the secretary of state.

§ 323. Idaho—Requirements to Be Followed in Making Application Under Blue Sky Law.—All applicants must comply with every provision of the Blue Sky Law and in order to do this, there must be filed and furnished the following:

1. A filing fee of twenty-five dollars (\$25) for foreign companies and five dollars (\$5) for domestic companies.

2. A statement giving the name and location of the company and its principal place of business and date of incorporation, if incorporated, and in what state incorporated.

3. The amount of capital stock and the total number of shares and their par value and whether common or preferred or both.

4. Submit a list showing in detail the exact ownership of the total capital stock on date application is made, also the amount of stock held in the treasury of company.

5. Submit a statement showing in full detail the plan on which it is proposed to transact business.

6. If any options or contracts have been given on stock, attach a copy to application, also attach a copy of all contracts or agreements that have been entered into that relate to the affairs of the company. If there are none in existence, or none contemplated, so state.

7. Give list of securities that have been previously issued and consideration received for each issue; if none, so state.

8. Give the amount and kind of securities proposed to be issued and the price per share or otherwise at which it is desired to sell same. In this clause state a definite price at which the stock is to be sold.

9. State the brokerage or commission paid on previous sales and proposed to be paid on future sales and show the necessity for paying such commission or brokerage on future sales.

10. State the amount of money actually required for the development of the enterprise, so far as can be anticipated and segregate the same into the necessary items of expenditure.

11. Give the names and addresses of the officers and directors, showing the investment of each in the company and how acquired, and state the business experience of those who will be actually in

charge, together with the salaries paid or to be paid. If no salaries are to be paid, so state.

12. Give five references for the president and secretary of the company and if a going concern, give five references as to the company.

13. Submit a copy of all contracts, subscription blanks, bonds or other instruments which are used in connection with sale of stocks or securities.

14. Give a condensed statement of the liabilities and assets and full trial balance sheet of same date.

15. If a mining company, give the names of the properties, the name of the mining district, the county and state in which located, and also attach to application a certified copy of instrument showing ownership.

16. When an engineering report has been made, attach a copy to application; when no report has been made, so state.

17. Where patents for inventions are involved, submit a copy of the filing wrapper of the proceedings of the patent office.

18. Companies whose assets consist of or include real estate, such as mining, commercial, etc., should submit evidence of ownership or interest in such property, and full description and location of all such property should be made.

19. If a partnership or incorporated association, it shall also file with the department of finance a copy of its articles of partnership or association and copies of all other papers pertaining to its organization.

20. If it be a corporation organized under the laws of the state of Idaho, it shall also file with the department of finance a copy of its articles of incorporation, a copy of its constitution and by-laws and a copy of all other papers pertaining to its organization.

21. If it be an investment company organized under the laws of another state, territory or government, incorporated or unincorporated, it shall also file with the department of finance a copy of the laws of such state, territory or government, under which it exists or is incorporated; and also file a copy of its charter, articles of incorporation, constitution and by-laws and all amendments thereof; also copies of all papers pertaining to its organization.

22. All the above mentioned papers must be verified by the oath

of a member of such partnership or company; or if it be either an incorporated or unincorporated association, by the oath of a duly authorized officer thereof.

23. All such papers required which are recorded or are on file in any public office shall be certified by the officer of whose records or archives they form a part as being correct copies of such records.

24. Section 4 of chapter 224 of the Compiled Laws with reference to consent of foreign investment companies to be sued must be complied with.

25. Any other information touching the affairs of such investment company or corporation which the department of finance may require.

§ 324. Illinois—Blue Sky Law.—For the purposes of the Illinois Securities Act, securities are divided into four classes, as follows: Securities, the inherent qualities of which assure their sale and disposition without the perpetration of fraud, which shall be known as securities in class “A”; securities, the inherent qualities of which, or in the nature of one or both parties to the sale thereof, assure their sale and disposition without the perpetration of fraud, which shall be known as securities in class “B”; securities based on established income, which shall be known as securities in class “C”; securities based on prospective income, which shall be known as securities in class “D.”

No person, owner, dealer and broker, or solicitor or agent, shall offer for sale or sell securities within the state of Illinois unless registered with the secretary of state as owner, dealer and broker, or as solicitor or agent, provided, however, that registration shall not be required of anyone when engaged solely in making sales which are specifically exempted. Any person, firm or partnership or corporation, of good repute upon entering into bond in the penal sum of two thousand dollars (\$2000) payable to the people of the state of Illinois for the use and benefit of all persons interested, with terms, conditions and in form to be approved by the secretary of state and with a surety company satisfactory to the secretary of state as surety; provided, that the secretary of state in his discretion may in any case require a like bond in larger amount but not in excess of the sum of fifty thousand dollars (\$50,000) and

that the secretary of state in his discretion may permit a single bond for fifty thousand dollars (\$50,000) with suitable conditions to be filed to cover the necessary requirements and on the payment of a fee of twenty-five dollars (\$25) and on such other reasonable conditions as may be imposed by the secretary of state may become a registered owner, dealer and broker, and if and when duly registered, but not otherwise, may offer for sale and sell securities in classes "A," "C" and "D." Before filing any statements required to be filed with reference to securities in class "C" or in class "D" the person so filing such statements shall pay in advance to the secretary of state a fee of one-twentieth of one per cent of the amount of the securities to be offered for sale in this state, but in no case shall the fee be less than twenty-five dollars (\$25) or more than three hundred dollars (\$300).

Before any securities in classes "C" or "D" shall be sold or offered for sale the issuer or person intending to sell or offer for sale such securities shall file in the office of the secretary of state a written irrevocable consent and power of attorney, that suits at law or in equity arising out of or founded upon the sale or offering for sale of any of such securities may be commenced against the corporation or person executing such power of attorney in any court of competent jurisdiction within the state of Illinois, in any county in which plaintiff or complainant resides, or in which the cause of action may have arisen, by the service of process upon the secretary of state.

§ 325. Indiana—Blue Sky Law.—The Indiana securities law requires all securities to be registered before being sold. Securities may be registered either by notification or qualification. Securities entitled to registration by notification shall be registered by the filing by any registered dealer interested in the sale thereof in the office of the commission of a written statement with respect to such securities containing the following:

- (a) Name of issuer.
- (b) A brief description of the security including amount of the issue.
- (c) Amount of securities to be offered in the state.
- (d) A brief statement of the facts which show that the security

falls within one of the classes entitled to registration by notification.

(e) The price at which the securities are to be offered for sale.

At the time of filing the statement, as hereinbefore prescribed, the applicant shall pay to the commission a fee of one-twentieth of one per cent of the aggregate par value of the securities to be sold in the state of Indiana for which the applicant is seeking registration, but in no case shall such fee be less than five dollars (\$5) nor more than one hundred fifty dollars (\$150). In the case of stock having no par value, the price at which such stock is to be offered to the public, shall be deemed to be the par value of such stock.

The secretary of state shall receive applications to have securities registered by qualification, upon prescribed forms. Applications shall be in writing and shall be duly signed by the applicant and sworn to by any person having knowledge of the facts, dated and filed in the office of the secretary of state and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within this state. The secretary of state shall require the applicant to submit to him the following information and such other information as it may in its judgment deem necessary:

(a) The name and addresses of the directors, trustees and officers, if the issuer be a corporation or association or trust organized or existing under the common law, of all partners, if the issuer be a partnership, and of the issuer if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in the state of Indiana, if any.

(c) The purposes of incorporation (if incorporated) and the general character of the business actually to be transacted by the issuer.

(d) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty days prior to the date of filing such balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made; and a copy of all circulars, prospectuses, advertisements or other

descriptions of such securities then prepared by or for such issuer and by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this state.

(e) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.

(f) A statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(g) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment.

(h) The amount of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(i) If the issuer is a corporation, there shall be filed with the application a sworn copy of its articles of incorporation with all amendments and of its existing by-laws, if not already on file in the office of the secretary of state. If the issuer is a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership or an unincorporated association, or joint stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office of the secretary of state.

At the time of filing the information, the applicant shall pay to the secretary of state a fee of one-twentieth of one per cent of the aggregate par value of the securities to be sold in the state of Indiana, for which the applicant is seeking registration but in no case shall such fee be less than twenty-five dollars (\$25) or more than two hundred dollars (\$200). In the case of stock having no par value, the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock.

Upon any application for registration, whether made by an

issuer or registered dealer, where the issuer is not domiciled in the state of Indiana, there shall be filed with such application the irrevocable written consent of the issuer that suits and actions, growing out of the violation of any provisions of the securities law, may be commenced against it in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on the secretary of state.

§ 326. Iowa—Blue Sky Law.—Every person, firm, association, company, or corporation that shall either directly or through representatives or agents, sell, offer or negotiate for sale, within the state of Iowa any securities must secure a permit from the secretary of state. Before any of the aforesaid shall secure a permit, such person, firm, association, company, or corporation shall pay to the secretary of state a filing fee of two dollars (\$2) and an annual inspection fee of twenty dollars (\$20) and file in the office of said secretary of state the following papers and documents, to wit:

1. A copy of its constitution and by-laws, or articles of copartnership or association.

2. An itemized statement of its actual financial condition and the amount of its properties and liabilities.

3. A statement showing in full detail the plan upon which it proposes to transact business.

4. A copy of all bonds or other securities which it proposes to make with or sell to its contributors, including the price at which such stocks, bonds or other securities are to be sold or offered for sale.

5. Sample copies of all literature or advertising matter used or to be used by such person, firm, association, company or corporation.

6. A statement showing the name and location of its principal office of business and the names and addresses of its officers and directors.

7. If said person, firm, association, company or corporation is chartered to do business under the laws of any other state or territory than the state of Iowa it shall file a copy of its charter or

other instrument or documents authorizing it to do business in said state or territory, which copy shall bear the certificate of the secretary of state or other officer of such state having custody of such records to the effect that the same is a correct, true and complete copy of said charter or other instrument, together with the seal of such officer attached thereto, if such officer is possessed of a seal.

If any person, firm, association, company or corporation desire to transact business in the state of Iowa and does not desire to pay the annual inspection fee of twenty dollars (\$20) by reason of the limited amount of business to be transacted, or otherwise, said person, firm, association, company or corporation shall have the option of paying to the secretary of state the filing fee of two dollars (\$2) incident to the cost of filing and recording said papers and documents and an inspection fee of one-tenth of one per cent upon the face value of the securities for the sale of which application is made to the secretary of state.

Every non-resident person, firm, association, company or corporation must, before receiving a certificate, file his or its written consent to service of process on the secretary of state.

§ 327. Kansas—Blue Sky Law.—The Kansas Blue Sky Law provides, "It shall be unlawful hereafter for any person, copartnership, association or corporation (hereinafter called the promoter), either as principal or through brokers or agents, to sell or offer for sale by means of any advertisements, circulars, or prospectus, or by any other form of public offering, any speculative securities in this state unless there first shall have been filed with the bank commissioner and approved by him: (1) A copy of the securities so to be promoted; (2) a statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien authorized or issued by any such person or company; (3) the name of the fiscal agent, if any, who it is proposed shall handle the sale of such proposed securities, together with a statement of the financial standing of such fiscal agent; (4) if such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien and a com-

plete appraisal or valuation of the property covered thereby, with a specified statement of all prior liens thereon, if any; (5) a full statement of facts showing the gross and net earnings, actual or estimated, of any person or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien; (6) all knowledge or information in the possession of such promoter relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (7) a copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed as herein provided; (8) the names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall be paid to the bank commissioner a registration fee of one dollar for each such agent. The payment of such fee shall be payment in full for all fees for registration of such agent until and including the first day of March next following; (9) the name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association; (10) a statement showing in detail the plan on which the business or enterprise is to be conducted; (11) the articles of copartnership or association, and all other papers pertaining to its organization, if the securities be insured or guaranteed by a copartnership or unincorporated association; (12) a copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; (13) a filing fee of twenty-five dollars; and in no event shall any speculative securities be sold or offered for sale until a permit shall have been issued."

Every foreign corporation before selling or offering for sale any speculative securities in the state of Kansas shall also file its written consent, irrevocable, that actions may be commenced against it in the proper courts of any county in this state in which a cause of action may arise, by the service of process on the secretary of state, and stipulating and agreeing that such service of process on the secretary

of state shall be taken and held in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such instrument shall be authenticated by the seal of said foreign corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same.

Before any permit shall issue by the bank commissioner under the order of the charter board, all stock or securities of any kind issued or to be issued in payment of property, patents, formulae, good will, promotion or intangible assets shall be deposited by the person to whom they are to be issued, or by the company or promoter issuing them, with the bank commissioner of the state of Kansas, to be held by him until the securities for the sale of which the permit has been granted shall have been sold, and until there shall have been filed with the bank commissioner a statement under oath by the proper officers of any company or by the promoter, showing the requirements made by the said charter board or by the bank commissioner have been met; that the securities have been sold only in the way provided for by law; and that there has been a full compliance with the provisions of the Blue Sky Law and with the orders of the bank commissioner or the charter board or both.

§ 328. Kentucky—Blue Sky Law.—Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatsoever in the commonwealth of Kentucky any contracts, stocks, bonds or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the bank commissioner a statement showing in full detail the plan upon which it proposes to transact business, a copy of all contracts, stocks, bonds or other instruments which it proposes to make with or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisements of its sale of stocks, bonds, or other securities, which statement shall also show the name and location and main office of the investment company, the names and addresses of its officers, and an itemized account of its financial condition and of its assets and liabilities, and such other information touching its condition and affairs as the bank commissioner

may require. If such investment company shall be a copartnership or an unincorporated association, it shall also file with the bank commissioner a copy of its articles of incorporation or copartnership, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government incorporated or unincorporated, it shall also file with the bank commissioner a copy of the laws of the state, or territory, or government, under which it exists or is incorporated, and also a copy of its charter and the certificate of the proper officer of such state showing that it is authorized to transact business there; and also copies of its constitution and by-laws and of all amendments of any of the above mentioned instruments which have been made, and of all other papers pertaining to its organization. It shall also pay a filing fee of one-tenth per cent upon the face value of the securities for the sale of which application is made; provided, however, such filing fee shall not be more than one hundred dollars nor less than ten dollars.

All of the above described papers shall be verified by the oath of a member of the copartnership or company, if it be a copartnership or company, and by the oath of a duly authorized officer, if it be a corporation or an unincorporated association.

Every foreign investment company before offering for sale any of its stocks, bonds or other securities in the commonwealth of Kentucky must also file its written consent to service of process on the bank commissioner. Said bank commissioner may cause an appraisal to be made at the expense of the investment company of the property of the said investment company, including the value of patents, good will, promotion and intangible assets, and he may fix the amount of stocks, bonds or other securities that may be issued by any corporation, foreign or domestic, in payment for property, patents, good will, promotion and intangible assets at the value he shall find same to be worth, and may require that such stocks, bonds or other securities so issued for such property patents, good will, promotion and intangible assets shall be deposited in escrow under such terms as said bank commissioner may prescribe.

§ 329. Louisiana—Blue Sky Law.—Every person, corporation, copartnership, company, or association organized or which shall hereafter be organized in the state of Louisiana, whether incor-

porated or unincorporated, shall, before selling, offering for sale, taking subscriptions for or negotiating in this state any stocks, bonds or other securities not covered by certain exemptions shall file in the office of the Louisiana securities commission a statement giving:

(1) A description and amount of the securities intended to be offered for sale;

(2) If the issuer be a corporation, a certified copy of the charter or articles of incorporation and by-laws;

(3) If the issuer be a firm, trust, partnership, or unincorporated association, a copy of the articles of partnership, association or trust agreement;

(4) The names, addresses and prior occupations during a period of not less than 10 years prior to filing such statement (giving details as to time, place and address of employer and reasons for discontinuance of employment) of the officers, directors or trustees of the issuer, if it be a corporation, or of the persons composing the issuer if the issuer be a non-incorporated association;

(5) A description of the nature of the industry engaged in or intended to be engaged in and the approximate time when industry was or will be established;

(6) An inventory showing the assets of the issuer;

(7) An appraisalment of the assets of the issuer;

(8) A statement in detail of the gross income of the issuer and the source or sources thereof and of its operating and other expenses for a period of 12 months prior to the date of filing such statement, or for the period of the existence of the issuer if less than 2 years prior to the date of filing;

(9) A copy of the mortgage, trust deed, indenture or writing securing the securities, whereunder the same are issued, if any such instrument there be;

(10) A copy of the form of securities intended to be offered;

(11) A copy of the most recent balance sheet of the issuer, showing the financial condition of the issuer at a date not more than 30 days prior to the date of filing, and giving an analysis of surplus account from inception of such issuer;

(12) A copy of any and all subscription blanks to be used in the sale thereof;

(13) A statement as to the manner in which the securities are to be offered and sold;

(14) A summary of the material facts disclosed by the preceding statements; such statements shall, except as otherwise herein provided, be verified by the oath of not less than two of the officers of the issuer, if the issuer be a corporation, or by not less than two members of the firm, trust partnership, or association, if the issuer be non-incorporated. The securities commission may require further and additional verification under the oaths of other persons;

(15) Each such application shall be accompanied by a filing fee of 1/10 of one per cent upon the face value of the securities covered by the application; provided, however, that such filing fees shall not be more than two hundred dollars (\$200) nor less than twenty-five dollars (\$25).

Every foreign investment company before offering for sale any of its stocks, bonds or other securities, in the state of Louisiana must also file its written consent to service of process on the president of the securities commission.

§ 330. Maine—Blue Sky Law.—For the purpose of the Blue Sky Law of Maine, the term “dealer” shall mean any individual, partnership, association or corporation engaging in the business of selling or offering for sale securities, except to or through the medium of, or as agent or salesman of, a registered dealer. But sales made by, or in behalf of, a vendor in the ordinary course of *bona fide* personal investment, or change of investment, shall not constitute such vendor, or the agent of such vendor, if not otherwise engaged either permanently or temporarily in selling securities, a dealer in securities. Nor shall the offer of or sale of its own securities by an association or a corporation to its own members or stockholders constitute such association or corporation a dealer in securities.

Any dealer desiring registration shall file written application therefor with the bank commissioner, which shall be in such form as may be prescribed by the commissioner, and shall state the principal place of business, the name or style of doing business, and the address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, specifying as to each his capacity and title, and the length of time during which the dealer has been engaged in the business. Each application shall be accompanied by certificates or other evidence of the dealer’s good repute, and, if required by the

commissioner, a copy of the securities to be sold, a statement in detail of the assets and liabilities of the issuer of such securities, a statement in such form as the commissioner may prescribe of the general affairs of the dealer and issuer, copies of any mortgage or instrument creating a lien by which such securities are secured, a full statement of the earnings and expenses of each issuer for three years prior to the filing of the application, a copy of any contract to underwrite the securities to be offered for sale, the names and addresses of all persons holding ten per cent or more of the capital stock of the issuer, a statement in detail of the plan on which the business of the dealer is to be conducted, and such other information as the commissioner may deem necessary in considering the application. Every non-resident shall file a power of attorney, irrevocable, properly authorized, and with satisfactory certificates or other evidence of the authorization, appointing the commissioner agent for the service of legal process upon the dealer in any actions in the courts of this state, based upon or arising in connection with any sale of, attempt to sell, or advertising of, securities in the state of Maine.

Upon the filing of the application, the commissioner shall forthwith give notice of the fact and date of such application, and of the name, principal place of business and address of the dealer, by advertisement inserted once in the state paper and once in a newspaper of general circulation where the dealer's place of business is located, if it be elsewhere in this state than in the city of Augusta. The registration certificates shall not be issued before the expiration of two weeks from the last publication. Any person may, within such period of two weeks, file objection to the proposed registration.

If the commissioner be satisfied that the dealer is of good repute, and that the proposed plan of business of the dealer is not unfair, unjust or inequitable, and that the dealer intends to conduct its business honestly and fairly with disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and value of the securities, and without intent to deceive or defraud, and that the securities that it proposes to issue or sell are not such as in his opinion will work a fraud upon the purchasers thereof, he shall register the dealer unless objection to such registration shall be filed with the commissioner within the period of two weeks succeeding the publication of the dealer's application.

§ 331. Maryland—Blue Sky Law.—The Maryland Blue Sky Law provides: “If it shall appear to the attorney general of the state of Maryland that in the issuance, sale, promotion, negotiation, advertisement of, or distribution of any stocks, bonds, notes or other securities within the state of Maryland, any person, partnership or corporation is employing or is about to employ any device, scheme or artifice to defraud, or for obtaining money or property by means of any false or fraudulent pretense, representation or promise, or the said attorney general believes it to be in the interest of the public that an investigation be made with a view to the issuance of an order, such as herein provided, he may require such person, partnership or corporation to file with him a statement in writing under oath as to all facts concerning the same, and for that purpose may prescribe forms upon which such statements shall be made. The attorney general may require, in addition thereto, such further data and information as he may deem relevant and make such special investigation as may be necessary, and for the purposes of this act the attorney general, or an assistant attorney general duly authorized by him, shall have power to require by subpoena or summons the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence relating to any matter which the attorney general is authorized by this act to consider or investigate. The attorney general, or his duly authorized assistant, may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience to a subpoena or of the contumacy of any witness appearing before the attorney general or his duly authorized assistant attorney general, the attorney general may invoke the aid of the circuit court of any of the counties of the state of Maryland, or of the superior court of Baltimore City. Such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or to give evidence or produce books, accounts, records, papers and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. In the case of a failure or refusal of any person, partnership or corporation concerned in the issuance, sale, offer for sale, promotion, advertisement or distribution of any stocks, bonds, notes or other securities within the state of Maryland, to file any statement or to furnish any information, books, papers or records required by the

attorney general or his duly authorized assistant, to be filed or furnished in connection with such investigation under this act, the attorney general may issue his order under section 12 of this article."

It is further provided, in section 12, "The attorney general may, upon evidence satisfactory to him, that in the issue, sale, promotion, negotiation, advertisement of or distribution of any stocks, bonds, notes or other securities within the state of Maryland, any person, partnership or corporation is employing or is about to employ any device, scheme or artifice to defraud, or for obtaining money or property by means of any false or fraudulent pretense, representation or promise, issue and cause to be served upon such person, partnership or corporation an order requiring the party guilty thereof to cease and desist therefrom. If it shall appear to the attorney general that an irreparable public injury is imminent, unless such order is issued before a full investigation can be made pending such investigation, he may issue such order, but the same shall be accompanied with a request for information as to the facts relied on in issuing the order, and such temporary order shall only remain in force until such information is furnished and two days thereafter. Orders of the attorney general under this section may be served by anyone duly authorized by the attorney general either (a) by delivering a copy thereof to the person to be served; or to a member of the partnership to be served, or to the president, vice-president, secretary or other executive officer or director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership or corporation; or (c) by registering and mailing a copy thereof, addressed to such person, partnership or corporation at his or its principal office or place of business. A verified return by the person so serving said order, setting forth the manner of said service, shall be prima facie proof of the same, and the return postoffice receipt for said order registered and mailed as aforesaid shall be prima facie proof of the service of the same, as aforesaid."

§ 332. **Massachusetts — Blue Sky Law.** — No security not exempted shall be sold in the commonwealth of Massachusetts unless and until there shall have been filed with the securities commission by a person offering the same for sale or by the directors or

trustees of the corporation, association, trust or other body issuing the security, or by other officers holding a corresponding relation thereto, or by officers duly authorized by such directors or trustees to take such action, a notice of intention to offer for sale the security named and specified in the notice; but within seven days, or such further period as in any special case the commission may authorize, after filing said notice, the person or officers, or some one in their behalf, shall file with the commission a statement of the purposes to which the proceeds of the proposed issue are to be applied in addition to a statement on such forms as the commission may prescribe, duly dated and sworn to by the person or officers subscribing and filing the same, containing the following information and data relative to the security to be offered and the person, corporation, association or trust issuing such security, to wit:

(a) The names and addresses of the board of directors or other board of management, and of the president, treasurer, secretary, auditor, or corresponding officers of such corporation, association or trust;

(b) The state or other sovereign power, under the laws of which the corporation, association or trust was organized, and a reference to such laws;

(c) The purpose for which the corporation, association or trust was organized or formed and the general nature of the business to be transacted or in which it proposes to engage;

(d) The capitalization thereof, including the authorized amount of its capital stock, the number and classes of shares into which such capital stock is divided, a description of the respective voting rights, preferences, rights to dividends, profits or capital of each class with respect to each other class, the amount of capital stock of each class issued or included in the shares of stock to be offered, the amount of the funded debt, if any, with a brief description of the date, maturity and character of such debt, and the security, if any, therefor. Upon and after the filing of such notice the said security may be sold and offered for sale by any registered broker or salesman, subject, however, to the right of the commission in its discretion to forbid its sale until the required information is filed.

If, upon receipt and examination of the notice or of any statement required the commission deems the information inadequate it shall make further investigation as it shall deem necessary or ad-

visible, and may require from the person filing such statement or from any person or persons issuing such security such further information under oath, including examinations and reports by reputable accountants, engineers and other experts, at the expense of the person or persons aforesaid, as may in its judgment be necessary to enable it to ascertain whether the sale of such security would be fraudulent or would result in fraud. The failure to submit the information required by the commission within such reasonable time as it may specify shall in the absence of satisfactory explanation or of extension by the commission of the time for filing such information, be deemed *prima facie* evidence of fraud.

No non-resident person not having a usual place of business in the commonwealth of Massachusetts shall be registered as broker or salesman unless and until he has filed with the commission a writing, in a form to be approved by the attorney general, appointing the secretary of the commission or his successor in office to be his true and lawful attorney upon whom all lawful processes in any action or proceeding against him relative to or connected with an act or acts done as such salesman or broker may be served.

§ 333. Michigan—Blue Sky Law.—No security shall be sold to any person within the state of Michigan unless and until the issue of securities, of which such security to be sold is a part, shall have been accepted for filing by the Michigan securities commission, excepting as the security itself or the transaction therein is specifically exempted. The commission is authorized to receive and act upon applications to have securities accepted for filing and shall prescribe forms upon which such applications are made. Applications shall be sworn to and dated and lodged in the office of the commission and may be made either by the issuer of the securities applied for or by any person desiring to sell the same in the state of Michigan, and each application shall show upon its face that the persons signing the same have full power and legal authority so to do and have knowledge of the facts therein set forth. Before accepting any securities for filing the commission may require the applicant to furnish any information necessary to determine whether such security should be so accepted.

The commission shall charge and collect from each applicant for filing of securities a fee of one-tenth of one per centum upon the

face of the securities for the sale of which in Michigan application is made; provided, that such fee shall not be less than ten dollars nor more than two hundred and fifty dollars where the amount of securities to be sold is not over one million dollars. In case the amount to be sold exceeds one million dollars the fee shall be three hundred dollars. If any such securities have no par value, the price at which the applicant proposes to issue or sell the same to the public shall be deemed the value for the purpose of computing the fee. When the price of no par value stock is not ascertainable by the commission the value placed thereon by the state of domesticity for taxation or franchise fee purposes shall be accepted.

The right to sell securities in the state of Michigan shall not be granted in any case where it appears to the commission that the sale of such securities would work a fraud, deception or imposition on purchasers or the public, or that the proposed disposal of the securities is on unfair terms. The commission may impose such conditions as it may determine necessary to safeguard the sale and transfer of securities before the same are accepted for filing, and may require such part thereof as were or are proposed to be issued for intangibles, promotions or organization fees to be escrowed with the commission under such terms as may be prescribed to the end that the owners of the securities so issued shall not in case of dissolution or insolvency participate in the assets of the owner until the owners of all other securities have been paid in full. The commission may also limit the price at which the securities, either of par or no par value, may be sold, and allow a commission not to exceed twenty per cent of the sale price, such percentage to include all expenses incidental to such sale, including advertising or any other expense chargeable in any way to the sale of such securities.

The commission shall in no case authorize the sale of any stock at a price in excess of the par value thereof, or of any non-par value stock at a price in excess of the value thereof, unless the same can show net earnings of not less than five per cent for a period of at least one year immediately preceding the application, or can show assets equal to the value of the issue authorized, and the value of non-par stock hereunder shall be taken at its fair book value.

Any issue of securities or part thereof may be offered for sale preliminary to and pending the filing of such securities as provided in the Blue Sky Law, in any case where the commission is satisfied

that such preliminary offering will not be detrimental to the public. Such consent shall be conditioned that within thirty days, or such further time as the commission may allow, there shall be presented an application for the full filing of said securities. Such consent shall be granted only after a satisfactory showing and the payment of the usual fee. No issuer or other party not being a resident of the state of Michigan shall be entitled to the benefit of this section unless there shall also be on file with the commission consent to service as hereinafter provided.

Every applicant for the filing of securities who is a non-resident of the state of Michigan, shall at the time of filing his application file with the commission his irrevocable consent that suits and actions arising out of or founded upon the sale of securities filed under this act, may be commenced against him in the proper court of any county in the state in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this state, on the chairman of the commission, said consent stipulating and agreeing that such service of such process or pleadings on such chairman shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant himself, and such consent of service shall be authenticated in the same manner as is hereinbefore provided for the authentication of applications. All process or pleadings required in this act to be served upon said chairman shall be served in duplicate copies, one of which shall be retained in the office of the commission and the other forwarded by registered mail forthwith to the head office of the person against whom said process or pleadings are directed.

§ 334. **Minnesota—Blue Sky Law.**—The Minnesota securities law provides that no securities not exempted shall be sold within the state of Minnesota, except in a manner exempted, unless or until such securities have been registered as herein provided. Registration may be secured by application for registration or by notification. Such applications or notifications may be made by the issuer or any licensed broker and may pray that the registration be made for the applicant only, or for the applicant and any designated licensed brokers.

Applications for registration of securities shall be made to the commissioner of securities on forms prescribed by the commissioner,

which application shall be signed and sworn to by the applicant and shall contain such information relative to the securities covered by such applications as the commissioner may deem necessary to enable it to determine whether such securities shall be registered. The commissioner shall have power in connection with pending applications for registration, to require the applicant to furnish in such form as he shall designate any additional information necessary to enable him properly to pass on the application before him, to order an appraisal, audit or such other expert or technical examination and report as may seem necessary; and, where the applicant is the issuer of the securities, or is selling same for the issuer as broker, to make an investigation of the books, records, property, business and affairs of such issuer. Registration shall be by entry in a book called "Register of Securities," which entry shall show the securities registered and for whom registered, and the conditions, limitations, and restrictions, if any, or shall make proper reference to a formal order of the commissioner on file showing such conditions, limitations and restrictions. A registration shall be made only for those on whose behalf application therefor was made, and shall authorize each of those for whom such registration was made to sell all or any portion of the securities so registered. A registration or registrations shall be good until exhausted by the sale of securities so registered, or until suspended, canceled or revoked. The commissioner shall have power to deny an application for registration if the securities are fraudulent or if it appear to the commissioner that the sale thereof would work a fraud on purchasers thereof, or if the applicant has violated any of the provisions of the securities law, or any registration or lawful order of the commissioner, or for good cause appearing to the commissioner. Denial shall be by written order.

Any person entitled to have any securities registered may in lieu of making application for registration, notify the commissioner of his intention to sell such securities, which notification shall be on forms prescribed by the commissioner, shall be signed and sworn to by the person giving the notice, and shall contain the following information:

- (a) Name of issuer.
- (b) Amount of issue and amount covered by the notification.
- (c) Statement that the securities fall within a designated class.

(d) **A** descriptive circular or statement briefly describing the securities.

(e) The price at which the securities are to be sold.

(f) Names of the issuer or licensed brokers, if any, on whose behalf the notification is given.

The following fees shall be paid to the commissioner:

(1) On application for registration, \$1 per \$1000 on the total proposed sale price of the securities covered by such application; provided, that the minimum fee shall be \$25 and the maximum fee \$500.

(2) On notification of intention to sell, 50 cents per \$1000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10 and the maximum fee \$100.

Every non-resident person shall, before having any securities registered or being licensed as a broker or agent, appoint the chairman of the commissioner and his successor in office, his attorney upon whom process may be served in any action or proceeding against such person or in which such person may be a party, in relation to or involving any transaction covered by the Minnesota securities law, which appointment shall be irrevocable.

§ 335. Mississippi—Blue Sky Law. — Before offering for sale or contracting to sell, directly or indirectly, in the state of Mississippi, any stock of a proposed corporation, or such increased stock of any existing corporation, before selling any stock in any townsite corporation, such corporation, or those promoting or having charge of the sale of stock of any proposed corporation, shall file, under oath, in the office of the secretary of state, together with a filing fee of fifty dollars, the following documents: **A** statement showing in full detail the plan upon which the corporation proposes to increase its capital stock or plan upon which the promoters or those having charge of the sale of stock of any proposed corporation proposes to sell its stock and organize the corporation, together with a copy of all forms of contracts, stocks or deeds, to be used by the corporation or its promoters, or those having charge of the sale of stocks of any proposed corporation in connection with such stock sales. The statement shall further show the name, location and domicile of such corporation, and the names of its officers or its proposed officers, if any,

or promoters and the addresses of all the parties; the amount of capital stock of any corporation already organized, the proposed increase, or the proposed capital stock of the corporation to be organized, and the price at which the stock is proposed to be sold, and the price at which the stock is proposed to be sold shall not be changed without the filing with the secretary a statement of such change, which shall be subject to his approval. Any such corporation or promoters of such proposed corporation shall furnish the secretary with such other information as may be necessary or proper concerning the sale of its stock. If it shall be a corporation organized under the laws of any other jurisdiction, it shall file with the secretary a copy of its original charter and all amendments thereto, and such other evidences of its authority as the secretary may require. Said statement shall also show the commission, promotion fee, and other estimated incidental expenses proposed to be charged for the organization of such proposed corporation, or the increase in the capital stock of any corporation already organized, and how the commission or fees are to be paid.

Each foreign corporation or the promoters of any proposed foreign corporation desiring to sell, or contract to sell its stock in the state of Mississippi shall first file with the secretary a power of attorney upon whom all service of process may be had.

§ 336. **Missouri—Blue Sky Law.**—No security not exempted shall be sold to any person within the state of Missouri unless and until the issue of securities, of which such security to be so sold is a part, shall have been recorded in the register of qualified securities. The commissioner is authorized to receive and act upon applications to have securities admitted to record in such register of qualified securities and may prescribe forms on which he may require such applications to be submitted. Application shall be in writing and shall be duly signed and sworn to and dated and filed in the office of the commissioner, and be made either by the issuer of the securities applied for or by any person desiring to sell the same within the state of Missouri. Before admitting any securities to record in such register, the commissioner may require the applicant to furnish such information as may in his judgment be necessary to enable him to ascertain whether such securities should be so admitted. The commissioner may require in any case such verification of information

submitted in support of applications as he may deem necessary or desirable. The commissioner shall charge and collect from each applicant for registration of securities a filing fee of \$10 plus the sum of fifty cents for each \$1000 par value of each entire authorized issue of securities desired to be registered, such fee in no case to be greater than \$100 for each such issue. If any such securities have no par value, the price at which the applicant proposes to issue or sell the same to the public shall be deemed the par value for the purposes of computing the fee to be paid by such applicant.

The commissioner may also in such instances as he deems necessary, before admitting securities to record in the register of qualified securities, secure information from and through others and may make or cause to be made investigations and examinations respecting the business, affairs, and property of the issuer, and may make or cause to be made appraisals of property or audits of books by appraisers or auditors selected by said commissioner, such investigations, examinations, appraisals, and audits to be at the expense of the applicant for registration of such securities.

Every person contemplated by the Missouri Securities Act, who is a non-resident of the state of Missouri, before he shall avail himself of any of the provisions of the Securities Act, shall file with the commissioner a written power of attorney, appointing the commissioner his true and lawful attorney, and upon whom all lawful process in any action or proceeding against him, may be served.

§ 337. Montana—Blue Sky Law.—It is unlawful in the state of Montana for any investment company to sell, offer for sale, take subscriptions for or negotiate for the sale, in any manner whatsoever, of any stocks, bonds, or other securities of any kind or character other than those exempted without a permit from the state investment commissioner. Before securing such permit, it shall be necessary for each and every investment company to file in the office of the investment commissioner, together with a filing fee of twenty-five dollars (\$25), the following papers, documents, etc., together with such other information and documents as said investment commissioner shall deem necessary in each case, to wit:

1. An itemized statement of its actual financial condition, and the amount of its properties and liabilities.

2. A copy of all contracts, bonds, or other securities which it proposes to make with, or sell to, its contributors.

3. Sample copies of all literature or advertising matter used or to be used by such investment company.

4. A copy of its constitution and by-laws, or articles of copartnership or association.

5. If it shall be an incorporated investment company, it shall also file a copy of its charter, and if it be a foreign investment company, such copy shall bear the certificate of the secretary of state, or other state officer having custody of such records, that it is a true, complete, and correct copy.

All of the above described papers shall be verified by the oath of a duly authorized member of a copartnership or association, if it be a copartnership or association, and by the oath of the president and secretary, if it be incorporated, provided that the investment commissioner shall have the power to require such officers to make affidavit to such other reports or information as he may call for.

Every foreign investment company shall also file its written consent, in such form as may be approved by the investment commissioner, that actions may be commenced against it, in the proper court of any county in the state of Montana in which a cause of action may arise, or in which the plaintiff may reside, by the service of process on the investment commissioner.

§ 338. Montana—Rulings of the Investment Commissioner.

—1. All exhibits called for in the application blanks must have the careful consideration of the company making application, and in any event where information called for cannot be furnished, a sheet should be inserted, giving same the proper designation and stating thereon the reason why the required data cannot be supplied.

2. All assignments, deeds, leases and mortgages of property owned by the company must be duly recorded with the proper recording officer before filing application for license.

3. Eight references are required as to the company, five of which must be banks or banking connections. Four references are required as to each director and officer, two of which must be banks or banking connections.

4. All agents and salesmen selling stock, bonds and other securi-

ties in the state of Montana must be *bona fide* residents of the state of Montana and citizens of the United States.

5. All applications for agents' licenses must come from the company direct.

6. Each company shall be required to file with application for license a letter of authority, signed by the officers of the company under seal, that they agree to an audit or investigation of the company's affairs at any time the investment commissioner may deem it advisable and that they agree to pay a fee of ten dollars (\$10) per day for each day or fraction thereof plus actual traveling and hotel expenses of said commissioner or his deputy or agent, that he is absent from the capitol building for the purpose of making such examination.

7. No license will be issued to any company within two weeks' time subsequent to the filing of application papers, pending reports from outside sources.

8. When reference is made in advertisements of any company to the fact that such company has been licensed by the investment commissioner the following wording must be used in its entirety:

"This company has been licensed under the Montana Investment Law and is permitted to do business in this state but the investment commissioner in no wise recommends the security to be offered for sale by such investment company."

9. In no case shall promotion expense exceed 25 per cent of the sale price of stock or securities.

§ 339. Nebraska—Blue Sky Law.—No person shall issue, sell, assign, transfer or offer or negotiate for the sale of any securities in the state of Nebraska, not exempted, until there shall have been filed with the department of trade and commerce a verified written application, and until and after said applicant shall have received from said department a written order authorizing it to proceed with the proposed offer, issuance, sale, assignment, or transfer of said securities. Such application shall state such facts, as the department may require, including: The correct name of the applicant, the name and addresses of the organizers, incorporators, subscribers, partners, trustees or individuals, as the case may be; the location of the principal place of business and all branch offices of applicant; a full statement of the nature of the business transacted

or to be transacted; a detailed statement of the plan upon which the applicant proposes to transact its business; a statement of any and all assets and liabilities which applicant may have, together with an explanation of each item; an income account if applicant shall have been in operation prior to the making of the application; a full statement setting out the purpose of the proposed issue of securities and what applicant will do with the consideration received from the issue of said securities; a certified copy of all original and amended articles of incorporation, articles of association, articles of agreement, as the case may be, and any and all by-laws under any of which applicant has operated or intends to operate; a copy or copies of any and all securities which it is proposed to offer, issue, assign, sell or transfer; a copy of any and all mortgages or other instrument creating any lien, which said lien exists as security for any securities offered; a certified copy of any contract or contracts made or which applicant proposes to make concerning the offer, issuance, sale, assignment or transfer of any of its securities; the names and addresses of any and all agents by or through whom such securities are to be sold or offered for sale; a full statement of the plan upon and under which said securities will be offered, issued or sold; a copy of any and all advertising matter which is to be used in connection with the offering, issuance or sale of said securities; a statement setting forth the amounts and kinds of securities which it is proposed to offer, issue or sell; a statement setting forth the names and addresses of any and all stock subscribers, capital securities holders or members thereof and the amount of said securities held or subscribed for by each; a statement setting forth the names, salaries, and amount of capital securities owned and held by each and every officer, member partner or trustee; an inventory of all assets held by applicant accompanied by an appraisement made by a qualified person or persons showing the actual value of all the assets described in said inventory, the person or persons making such appraisement to state in such appraisement the character and nature of their experience and qualifications to value such property and all other facts and considerations on the basis of which their estimate of value is predicated, such appraisement to be verified by the oath of the person or persons making the same; a full detailed statement of any and all property or properties for which applicant desires to issue its securities, in which

latter case a full inventory and appraisement shall be submitted to the department and prepared after the fashion last above mentioned; in addition to the foregoing, applicant shall file and submit such other information or statements as the department may require.

Prior to issuing or selling any stocks or securities the applicant, if a non-resident of the state of Nebraska, shall file with the department of trade and commerce an irrevocable power of attorney making the secretary of the department the attorney in fact of the applicant and all process issued in this state against the applicant in any action instituted in the county where the cause of action arose, may be served upon said attorney with the same force and effect as if such applicant were a domestic company having its principal office in such county.

Every application shall be accompanied by a receipt from the state treasurer for ten dollars (\$10) for cooperative companies and all other organizations coming within the provisions of the Blue Sky Law, having a capital not exceeding twenty-five thousand dollars (\$25,000), and receipt for twenty-five dollars (\$25) in all other cases. Each application for registration and license of an agent shall be accompanied by a receipt from the state treasurer for one dollar for each agent requesting registration and license.

§ 340. New Hampshire — Blue Sky Law. — No "dealer" in securities, which term means any individual, partnership, association or corporation engaging in the selling or offering for sale of securities, except to or through the medium of, or as agent or salesman of, a registered dealer, shall, in the state of New Hampshire, by direct solicitation or through agents or salesmen, or by letter, circular or advertising sell, offer for sale or invite offers for, or inquiries about securities, unless registered as a dealer under the Blue Sky Law.

Any dealer desiring registration shall file written application therefor with the insurance commissioner, accompanied by a registration fee of twenty-five dollars, the fee to be returned if the application is not granted. The application shall be in such form as may be prescribed by the commissioner and shall state in writing the principal place of business, the name or style of doing business, and the address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers,

directors or managing agents, specifying as to each his capacity and title, and the length of time during which the dealer has been engaged in the business. Every non-resident dealer shall file an irrevocable power of attorney, properly authorized and with satisfactory certificates or other evidence of the authorization, appointing the commissioner his agent for the service of legal process upon the dealer in any action in the courts of the state of New Hampshire based upon, or arising in connection with, any sale of, attempt to sell, or advertising of, securities in this state, or any violation of the Blue Sky Law. Each application shall be accompanied by certificate or other evidence sufficient reasonably to establish the applicant's good repute. The commissioner may make such other and further investigation thereof as he may deem desirable. Upon the filing of the application, the commissioner shall forthwith give notice of the fact and date of such application and of the name, principal place of business and address of the dealer, by advertisement inserted in one or more newspapers of general circulation. The registration certificate shall not be issued before the expiration of two weeks from the completion of such publication. Upon being satisfied of the applicant's good repute the commissioner shall, in case no objection to the proposed registration be filed, register the applicant as a dealer.

§ 341. New Jersey—Blue Sky Law.—An act to prevent fraud respecting securities offered for sale in the state of New Jersey, provides: "If it shall appear to the attorney general of this state upon complaint made to him, that in the issuance, sale, promotion, negotiation or distribution of any stocks, bonds, notes or other securities, that any person, partnership, or corporation is employing or about to employ any device, scheme, or artifice, to defraud, or to obtain money or property by means of any false or fraudulent pretense, representation or promise, and he believes it to be in the interest of the public that an investigation should be made with a view to restrain and prevent the same, he may require such person, partnership or corporation to file with his department a statement in writing, under oath, as to all facts concerning the same, and for that purpose he may prescribe the necessary forms upon which such statements shall be made. The attorney general, or his deputy, may require in addition thereto, such further data and information as

he may deem relevant, and shall have power to make such special investigation as he may deem necessary; and for the purpose of this act, the said attorney general, or his duly authorized deputy or agent shall have power to require by subpoena the attendance and testimony of witnesses, and the production of any books, accounts, records, papers, correspondence or other writings, which may relate to any matter which he, the said attorney general, is authorized by this act to consider or investigate."

§ 342. New Mexico—Blue Sky Law.—It shall be unlawful for any person, copartnership, association, common-law trust or trusteeship or corporation (hereinafter called the promoter), either as principal or through brokers or agents, to sell or offer for sale by means of any advertisements, circulars, prospectus or personal solicitation, or by any other form of public offering, any speculative securities in the state of New Mexico, unless there first shall have been filed with the state bank examiner, and approved by him, a statement in duplicate, containing: (1) A copy of the securities so to be promoted; (2) a statement in substantial detail of the assets and liabilities of the person, copartnership, association, common-law trust or trusteeship, or corporation making and issuing such securities and of any person, copartnership, association, common-law trust or trusteeship, or corporation guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien authorized or issued by any such person, copartnership, association, common-law trust or trusteeship, or corporation; (3) the name of the fiscal agent, if any, who it is proposed shall handle the sale of such proposed securities, together with a statement of the financial standing of such fiscal agent; (4) if such securities are secured by mortgage, or other lien, a copy of such mortgage or of the instrument creating such lien and a complete appraisal or valuation of the property covered thereby, with a detailed statement of all prior liens thereon, if any; (5) a full statement of facts showing the gross and net earnings actual or estimated, of any person, copartnership, association, common-law trust or trusteeship, or corporation, making and issuing or guaranteeing such securities, or of any property covered by such mortgage or lien; (6) all knowledge or information in the possession of such promoter relative to the character or value of such securities, or of

the property or earning power of the person, copartnership, association, common-law trust or trusteeship or corporation, making and issuing or guaranteeing the same; (7) a copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed as herein provided; (8) the names, addresses and selling territory in the state of New Mexico of any agents by or through whom any securities are to be sold, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall be paid to the state bank examiner a registration fee of five dollars for each such agent. The payment of such fee shall be payment in full for all fees for registration of such agent until and including the first day of January next following; (9) the name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees and of any person owning ten per centum, or more of the capital stock, if the promoter be an association, common-law trust or trusteeship, or corporation; (10) a statement showing in detail the plan on which the business or enterprise is to be conducted; (11) the articles of copartnership, or association, and all other papers pertaining to its organization, if the securities be issued or guaranteed by a copartnership or unincorporated association and the declaration of trust if the securities be issued or guaranteed by a common-law trust or trusteeship; (12) a copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; said statement shall be accompanied with a filing fee of twenty-five dollars; said statement shall constitute an application for the permit; and in no event shall any speculative securities be sold or offered for sale until a permit shall have been issued.

Every foreign corporation before selling or offering for sale any speculative securities, in the state of New Mexico, must also file its written consent to service of process upon the secretary of state.

§ 343. New York — Blue Sky Law. — The act of New York regulating the sale of securities defines a dealer as any person, partnership, corporation, company, trust, or association except a domestic municipal corporation who engages directly or through an agent in the business of trading in securities in such manner that as

part of such business any of such securities are sold or offered for sale to the public in the state of New York; or who deals in futures or market quotations of prices or values of any securities or accepts margins on prices or values of said securities. No dealer shall sell or offer for sale to the public in the state of New York, as principal, broker or agent, any securities issued or to be issued unless and until a notice, containing the name, business or post office address of such dealer and if such dealer is a corporation the state or country of incorporation thereof, and if a partnership the names of the partners, has been published in the state paper, to be known as the "state notice."

If the stocks, bonds or other securities of a foreign corporation, association, common-law trust or similar organization are offered or advertised for sale within the state of New York and such corporation, association, common-law trust or other organization has not filed the designation of a person upon whom process against it may be served pursuant to section sixteen of the general corporation law, or, in lieu thereof, an instrument in writing duly acknowledged and filed in the office of the secretary of state designating the secretary of state as the person upon whom may be served any subpoena, subpoena *duces tecum* or other process directed to such foreign corporation, association, common-law trust or similar organization and issued in any investigation, examination or proceeding pending or about to be instituted under and pursuant to the provisions of the act regulating the sale of securities, the attorney general may serve a notice upon such corporation, association, common-law trust or similar organization, or upon any non-resident officer thereof, by mailing the same in a securely postpaid wrapper addressed to such corporation, association, common-law trust or similar organization or officer thereof at its or his last known place of business or residence, and may in such notice require that such corporation, association, common-law trust or similar organization or such officer furnish a written statement, verified as required in said notice, giving the information therein specified relating to the stocks, bonds or other securities of such corporation, association, common-law trust or similar organization or, in the alternative, that such corporation, association, common-law trust or other organization, by its proper officer or officers, or such officer, shall appear within a reasonable time from the date of mailing of such notice at a desig-

nated place within this state for examination and shall produce at the time and place of such examination such books and papers of such organization as may be designated in such notice.

§ 344. North Carolina—Blue Sky Law.—No securities not exempted, shall be sold either directly or indirectly to any person within the state of North Carolina, unless and until such securities shall have been admitted to record and recorded in the register of qualified securities. The corporation commissioner shall receive and act upon applications to have securities admitted to record in such register of qualified securities and the commissioner may from time to time prescribe forms on which such applications shall be submitted. All applications shall be in writing and shall be signed and dated and sworn to, and shall thereafter be filed with the commissioner. Such applications may be made to and filed with the commissioner either by the issuer of the securities in question, or by any person desiring to sell the same in the state of North Carolina; the application must show in full detail the plan upon which the issuer of the securities in question or the person desiring to sell same proposes to transact business; copy of all applications for and forms of contracts, securities, bonds or other instruments, which it or he proposes to make with or sell to its or his contributors; a statement which shall show the name, location and head office of the issuer or person desiring to sell such securities, and an itemized statement of its financial condition, and the amount of its or his property and the liabilities, and such other information and in such form touching its or his affairs as the commissioner may require. If a foreign corporation, it or he shall also file with the commissioner a copy of the laws of such state, territory or government under which it exists and is incorporated, and also a copy of its charter of its home state and certificate of the proper officer of such state that it has authority to do business therein, articles of incorporation, constitution and by-laws, and all amendments thereof which have been made, and all other papers pertaining to its organization, and enter into an agreement as a condition precedent to being registered and licensed that stock or other offerings shall be sold only for cash or for notes or bonds payable to the company, and that said notes or bonds will not be sold or discounted with an endorsement "without recourse" or obligation not to be responsible for the same by the owner in a

general sale or canvass, or by any agent on salary or commission. Every note given for stock sold under the provisions of this capital issues law must have appearing upon its face the following: "The consideration of this note is stock in the corporation, and this note is not negotiable under the negotiable instruments law." The contract of subscription or of sale shall be in writing and shall contain a provision in the following language: "No sum shall be used for commissions, promotion and organization expenses on account of the sale of any securities offered for sale by this company in excess of five per centum of the amount actually paid upon separate subscriptions for such securities."

Each applicant for registration of securities shall at the time of filing its application pay to the commissioner, and the commissioner shall collect, a filing fee of fifty dollars plus the sum of two per centum of the par value of such issue of securities for which application for registration is filed. If any such securities have no par value, the price at which the applicant proposes to sell and issue the same to the public shall be deemed the par value thereof for the purpose of computing the fee to be paid by such applicant upon the filing of such application with the commissioner.

§ 345. North Dakota—Blue Sky Law.—It is unlawful in the state of North Dakota for any person, copartnership, association or corporation, hereinafter called the investment company, either as principal, or through agents, to sell, or offer for sale, or by means of any advertisement, circulars, or prospectus, or by any other form of public offering to attempt to promote the sale of any speculative securities in this state, unless there first shall have been filed with the securities commission: (1) A copy of the securities so to be promoted; (2) a statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company; (3) if such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon, if any; (4) a full statement of facts showing the gross and net

earnings, actual or estimated, of any person, or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or liens; (5) all knowledge or information in the possession of such investment company relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) a copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) the names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, including a statement giving the qualifications, occupations and business experience of each of such agents for a period of five years prior to the filing the names and addresses of each employer, the period of employment, and reason for resignation or discharge, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the commission a registration fee of three dollars (\$3) for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent from January 1st to January 1st of the following year; (8) the name and address of such promoter, including the names and addresses of all partners, if the investment company be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock if the promoter be a corporation or association; (9) a statement showing in detail the plan on which the business or enterprise is to be transacted; (10) the articles of copartnership or association, and all other papers pertaining to its organization, if the securities be insured or guaranteed by a copartnership or unincorporated association; (11) a copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; (12) a filing fee of twenty-five dollars (\$25).

Every foreign corporation before selling or offering for sale any speculative securities in the state of North Dakota must also file its written consent to service of process on the secretary of state.

§ 346. Ohio—Blue Sky Law.—No “dealer,” which term shall be deemed to include any person or company, except national banks,

disposing or offering to dispose of any security through agents or otherwise, shall within the state of Ohio dispose or offer to dispose of any securities not exempted without first being licensed so to do as hereinafter provided. Before such license shall be issued to any dealer, there shall be filed by him with the commissioner of securities together with a filing fee of five dollars, an application for such license, together with information in such form as shall be determined by such commissioner, setting forth:

(a) The names and addresses of the directors and officers, if such applicant be a corporation or association, and of all partners, if it be a partnership, and of the person, if the applicant be an individual, together with the names and addresses of all agents of such applicant assisting in the disposal of such securities.

(b) Location of the applicant or applicants' principal office and of such principal office in the state, if any.

(c) The general plan, including a detailed statement of the character of the business of said applicant or applicants, together with references thereto, which the commissioner of securities shall verify by investigation such as may be deemed necessary in determining the repute in business of such applicant, directors, officers, partners and agents.

(d) Every such applicant shall execute and file a bond to the state of Ohio in such sum in no case to be less than ten thousand dollars and with such surety as the commissioner requires, and shall also execute and file a bond to the state of Ohio in such sum as the commissioner may require, but not to exceed twenty-five hundred dollars with such surety as the commissioner requires for each agent named in such application or in any supplemental application made thereto. Such bonds shall be filed with the commissioner of securities and kept by him in his office. Such bonds shall be conditioned upon the faithful observance of all of the provisions of the securities law, and shall also indemnify any purchaser of securities from such dealer or agent who suffers a loss by reason of misrepresentations in the sale of such security by such dealer or agent. Any purchaser claiming to have been damaged by misrepresentation in the sale of any security by such dealer or agent may maintain an action at law against the dealer or agent making such misrepresentations; or both the dealer and agent where the agent makes such

misrepresentations; and may join as parties defendant the sureties on the bonds herein provided for.

If the applicant be a corporation organized under the laws of any other state, territory or government, or have its principal place of business therein, it shall also file a copy of its articles of incorporation, certified by the proper officer of such state, territory or government, and of its regulations and by-laws; and if it be an unincorporated association, a certified copy of its articles of association, or deed of settlement.

The applicant at the same time shall also file with said commissioner a duly executed written instrument, irrevocably consenting that any action brought against such applicant, arising out of and founded upon the fraudulent disposal of such securities by him or his agents, may be brought in Franklin county, and that, in the event that proper service of process cannot be had upon such applicant in such county, service of process made therein by the sheriff of such county, by sending a copy thereof by registered mail, at least thirty days prior to taking judgment in such case, addressed to such applicant at the place of his principal office named in his application or such other place as the applicant may thereafter designate in writing filed with the commissioner, shall have the same effect as if personally made upon the applicant according to the laws of the state of Ohio.

If the commissioner be satisfied of the good repute in business of such applicant and named agents, he shall, upon the payment of an annual fee of fifty dollars, and an additional fee of five dollars for each agent named in the application, register the applicant as a licensed dealer in such securities, and issue to him a license, containing the name of the applicant and all such agents, renewable annually upon payment of such annual fee, unless revoked.

§ 347. Oklahoma—Blue Sky Law.—It is unlawful for any person copartnership, association, or corporation, hereinafter called the promoter, either as principal, or through brokers or agents, to sell or offer for sale or by means of any advertisements, circulars or prospectus, or by any other form of public or private offering, to attempt to promote the sale of any speculative securities in the state of Oklahoma, including capital stock of such promoter, unless there first shall have been filed with and approved by the state issues commis-

sion, (1) a copy of the securities so to be promoted; (2) a statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company; (3) if such securities be secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon if any; (4) a full statement of facts showing the gross or net earnings, actual or estimated, of any person or company making and issuing or guaranteeing such securities, or of any property covered by mortgage or lien; (5) all knowledge or information in the possession of such promoter relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) a copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) the names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the said commission a registration fee of five dollars (\$5) for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent until and including the first day of March next following; (8) the name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association; (9) a statement showing in detail the plan on which the business or enterprise is to be conducted; (10) the articles of copartnership or association or corporation and all other papers pertaining to its organization, if the securities be insured or guaranteed by a copartnership or unincorporated association; (11) a copy of its

charter and by-laws if the securities be issued or guaranteed by a corporation; (12) a filing fee of twenty-five dollars (\$25).

Every foreign corporation before selling or offering for sale any speculative securities in the state of Oklahoma, must also file its written consent to service of process on the secretary of state.

§ 348. Oregon—Blue Sky Law.—Any “dealer,” which term shall include every person, partnership, corporation or association which is now engaged, or which shall hereafter engage, in the selling or in the buying for the purpose or in the contemplation of selling any securities, not having a permit or license to do business under the Blue Sky Law, shall not, in the state of Oregon, offer for sale or promote by advertisement, circular, or any other form of public or general offering, the sale of any securities to be hereafter issued unless prior thereto there shall have been filed with the corporation commissioner:

1. A copy of the security so to be issued.
2. A copy of any prospectus or advertising matter which is proposed to be issued in connection with the sale of such securities.
3. A statement in substantial detail of the assets and liabilities of the corporation proposing to issue such securities, or such a statement thereof as shall be prescribed by the corporation commissioner.
4. A full statement of facts duly verified by the executive officers of the corporation and three directors thereof showing the gross and net earnings for the preceding year of the corporation proposing to issue such securities, if the corporation has been in existence for that period; provided, that the corporation commissioner may require that such statement cover a longer period than one year; and provided further, that the corporation commissioner may require such statement to be prepared by accountants or may make an examination of the corporation's affairs at its expense with his own accountants.
5. Names and addresses of the officers and directors of the corporation proposing to issue such securities.
6. Purpose of the issue.
7. Description of the property and business to be followed.

Every dealer before transacting any business as a dealer in the state of Oregon under the Blue Sky Law shall secure from the cor-

poration commissioner a permit to do business as a dealer, and shall pay to the corporation commissioner at the time of making such application a filing fee of one-tenth of one per cent of the face value of the securities proposed to be sold; provided that such fee shall in no case be less than \$10 nor more than \$100. Every dealer before transacting any business in the state of Oregon shall secure from the corporation commissioner a license to do business as a dealer and at the time of applying to the corporation commissioner for such license shall pay a license fee of \$50, and shall file with the corporation commissioner evidence establishing the sound moral character and the good business repute of the applicant and showing for what length of time and where such applicant has been engaged in the sale of securities, together with a full statement under oath of the assets and liabilities of such applicant and such other information as the corporation commissioner may require.

§ 349. Pennsylvania — Blue Sky Law. — The term “dealer” shall include every person or company, other than a salesman, who engages for profit in the state of Pennsylvania, either for all or part of his time, directly or through an agent, in selling, offering for sale or delivery, or soliciting subscriptions to, or order for, or undertaking to dispose of, or to invite offers for or inquiries about, or dealing in any manner in, any security or securities within this state. No dealer shall by direct solicitation, or through agents or salesmen, or by letter, telephone, telegraph, circular, or advertising, sell, offer for sale, tender for sale or delivery, or solicit subscriptions to, or orders for, or dispose, or undertake to dispose of, or invite offers for, or inquiries about, any securities within the state of Pennsylvania without first being registered. A dealer to be registered must submit sworn application therefor to the commissioner of banking, which shall be in such form as the commissioner may determine, and which shall state the principal place of business of the applicant wherever situated, and the location of the principal place of business and all branch offices in the state of Pennsylvania, if any, the name or style of doing business, and the address of the dealer, the names, residences, and business addresses of all persons interested in the business as principals, officers, directors, or managing agents, specifying, as to each, his capacity

and title, the general plan and character of business of such applicant, and the length of time during which the dealer has been engaged in business. Such application shall also contain such additional information as to applicant's previous history, record, and associations, as may be required by the commissioner. Each application shall be accompanied by certificates or other evidences satisfactory to the commissioner, establishing the good repute in business of the applicant, his directors, officers, copartners, or principals. If the applicant be a corporation organized under the laws of any other state or territory or government, or shall have its principal place of business therein, it shall accompany the application with a copy of its articles of incorporation, certified by the proper officers of such state, territory, or government, and of its regulations and by-laws, if a limited partnership, a copy of its articles of copartnership, and, if an unincorporated association organized under the laws of any other state, territory, or government, or having its principal place of business therein, a copy of its articles of association, trust agreement, or deed of settlement.

Every company organized under the laws of any other state, or having its principal office therein and every non-resident individual must also file with its or his application a written consent to service of process on the commissioner of banking.

The commissioner shall charge the following fees:

(a) For the filing of any original or renewal application the sum of ten dollars (\$10).

(b) For each and every registration certificate, whether on an original or renewal application of a dealer, forty dollars (\$40).

(c) For each and every registration certificate, whether on an original or renewal application of an agent or salesman, ten dollars (\$10).

(d) For each and every registration certificate issued to a dealer after the first day of July of any year, twenty dollars (\$20).

§ 350. Philippine Islands—Blue Sky Law.—It is unlawful for any person, partnership, association or corporation either himself or through brokers or agents to sell or cause to be sold, offer for sale, take subscriptions or negotiate for the sale, in any manner whatsoever of any speculative securities in the Philippine Islands other than those expressly exempted without a written permit

from the treasurer of the Philippine Islands. Exclusive of securities specifically excepted, every person, partnership, association, or corporation attempting to offer to sell in the Philippines speculative securities of any kind or character whatsoever, shall be under obligation to file previously with the insular treasurer, paying to the same the tax of twenty pesos:

(a) A statement showing in detail the plan on which the proposed business or enterprise is to be conducted;

(b) A copy of all contracts, bonds or other instruments which it is proposed to make with or sell to contributors;

(c) A statement which will show the name and location of the person, partnership, association or corporation;

(d) An itemized account of the actual financial condition and the amount of property, debts and liabilities of the person, partnership, association, or corporation, and any and all other information that may be desired by the said treasurer of the Philippine Islands. Said statements shall be verified by the oath of a member of the partnership, association or corporation or by the oath of a duly authorized officer, if it be a corporation, or by a duly authorized agent of said person, partnership, association or corporation.

Before any person, partnership, association or corporation being a non-resident of the Philippine Islands, shall sell or offer for sale any securities, he or it, shall file in the office of the auditor of the Philippine Islands a power of attorney irrevocable, authorizing such auditor to accept service of summons or other legal process on behalf of such person, partnership, association or corporation.

§ 351. Rhode Island—Blue Sky Law.—No “person,” which term shall mean and include a natural person; a corporation created under the laws of the United States or of any state, territory, district or insular possession thereof, or of any other country or sovereignty; a partnership; an association; a joint stock company; a trust and a trustee or any beneficiary, agent or other person as herein defined, shall sell within the state of Rhode Island any security, unless exempted, unless there has been filed with the bank commissioner, prior to such sale notice of intention to offer such securities, hereinafter called notice of intention; said notice of intention to include such information as the commissioner may prescribe. The notice of intention shall be sent to the commis-

sioner by registered mail, and the placing of such notice of intention in the mail properly addressed to the commissioner shall be deemed sufficient filing of such notice of intention with the commissioner; provided, however, that the commissioner shall in his discretion exempt such notice of intention when in his judgment such notice of intention is not essential. In case the commissioner has reason to believe that any provision of the "Blue Sky Law" is being violated in connection with the sale of any security, he may require at any time subsequent to the filing of the notice of intention such further information as may enable him to determine whether fraud or illegality exists or is intended or is imminent in connection with such sale. The commissioner shall have power to prescribe the form in which such information shall be submitted to him and may require such information, or parts thereof, to be under oath or affirmation and may make appraisals of property or audits of books by appraisers or auditors selected and approved by him; said appraisals or audits to be at the expense of such issuer. Brokers shall place their names and addresses upon all circulars, pamphlets or advertisements issued by them; and no person, other than a broker registered under the "Blue Sky Law," shall issue any circular or pamphlet or publish any advertisement concerning securities within the state of Rhode Island unless such advertisement shall be signed by the person and all persons issuing, paying for, inserting and procuring the same with their respective addresses; and no person, other than a broker registered under the "Blue Sky Law," shall issue any circular or pamphlet or publish any advertisement in any paper concerning the sale or purchase of any security, without disclosing fully and in detail the interest of such person in such security. The commissioner may at any time require information showing the compliance of any one so advertising or so issuing circulars with the provisions of the "Blue Sky Law"; and may also at any time require information as to the amount of securities, the sale of which he can or could forbid, sold by any person, and the persons to whom such securities have been sold by any person, and the persons to whom such securities have been sold, and the terms and nature of said sales; provided, however, that securities to be offered in isolated sales may be advertised by any person other than a broker.

Every person registered as a broker shall pay an annual fee of twenty-five dollars. Every person registered as a salesman shall pay an annual fee of two dollars. All registrations unless sooner revoked or suspended shall continue in force until midnight on the thirty-first day of January next succeeding the date of such registration. Such fees shall be paid in advance and no person shall be deemed to be registered as a broker or salesman unless he shall have paid the fee as herein provided; provided, however, if new applications for registration as a broker shall be made after the first day of August in any year, the fee for such registration as a broker shall be one-half of the amount required for the full year.

§ 352. South Carolina—Blue Sky Law.—Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever in the state of South Carolina, any stocks, bonds or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the insurance commissioner a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, stocks, bonds or other instruments which it proposes to make with, or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisement of its sale of stocks, bonds or other securities, which statement shall also show the name and location and main office of the investment company, the names and addresses of its officers, and an itemized account of its financial condition and the amount of its assets and liabilities, and such other information touching its conditions and affairs as the commissioner may require. If such investment company shall be a copartnership or an unincorporated association, it shall also file with the commissioner a copy of its articles of copartnership or association, and all other papers pertaining to its organization. If it be a corporation organized under the laws of South Carolina, it shall also file with the commissioner a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the commissioner a copy of the laws of the state, territory or government under which it exists or is incorporated, and also a copy of

its charter and the certificate of the proper officer of such state, showing that it is authorized to transact business there; and also copies of its constitution and by-laws, and all amendments of any of the above mentioned instruments which have been made, and all other papers pertaining to its organization. It shall also pay a filing fee of one-tenth of one per cent upon the face value of the securities for the sale of which application is made; provided, however, that such filing fee shall not be more than one hundred dollars, nor less than two dollars and fifty cents (\$2.50).

Every foreign investment company, before offering for sale any of its stocks, bonds or other securities in the state of South Carolina must also file its written consent to service of process upon the insurance commissioner.

§ 353. South Dakota—Blue Sky Law.—Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever in the state of South Dakota, of any stocks, bonds, investment contracts or service contracts, purchase contracts, membership certificates which purport to create a liability on the part of the issuer, or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the state securities commission a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, stocks, bonds or other instruments which it proposes to make with or sell to its contributors or customer, together with a copy of its prospectus and of the proposed advertisements of its sale of stocks, bonds, investment contracts, or service contracts, purchase contracts, membership certificates or other securities which statement shall show the name, location and main office of the investment company, the names and addresses of its officers and an itemized account of its financial condition, the amount of its assets and liabilities, and such other information touching its conditions and affairs as the commission may require. No partnership, association or corporation shall be permitted to sell preferred stock within the state of South Dakota if the holders of such preferred stock are not given voting power equally with the holders of the common stock, unless the company shall have and shall undertake and agree to maintain at all times tangible net assets, exclusive of patent rights, trademarks and good will,

in an amount at least double the par value of all outstanding preferred stock, nor unless such company shall further undertake and agree not to place any mortgage or other incumbrances upon its property, without the consent, at a regularly or legally called special stockholders' meeting, of at least three-fourths of the preferred stockholders, and unless such preferred stock shall be preferred both as to assets and as to dividends. If such investment company shall be a partnership or an unincorporated association, it shall also file with the commission a copy of its articles of partnership or association, and all other papers pertaining to its organization. If it be a corporation organized under the laws of this state, it shall also file with the commission a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the commission, a copy of the laws of the state, territory or government under which it exists or is incorporated, and also a copy of its charter and the certificate of the proper officer of such state, territory or government, showing that it is authorized to transact business therein; and also copies of its constitution and by-laws, and all amendments to such instruments, if any have been made, and all other papers pertaining to its organization. Every such investment company, foreign or domestic, shall pay a certificate fee of one-tenth of one per cent upon the face value of the securities which it may be licensed to sell, up to the amount of fifty thousand dollars (\$50,000) and at the rate of two-tenths of one per cent upon the face value of the securities which it may be licensed to sell in excess of fifty thousand dollars (\$50,000), provided, however, that such certificate fee shall not in any case be more than five hundred dollars (\$500), nor less than ten dollars (\$10); and in addition thereto, any cooperative association or corporation organized and doing business wholly within this state and any other corporation or association applying for license to sell its stock or securities, whose capital stock does not exceed fifty thousand dollars (\$50,000), shall pay a filing fee of fifteen dollars (\$15); every association or corporation, not a local cooperative association or corporation, whose capital stock exceeds fifty thousand dollars (\$50,000) shall pay a filing fee of twenty-five dollars (\$25).

Every foreign investment company, before offering for sale any of its stocks, bonds, investment contracts or other securities in the state of South Dakota must also file its written consent to service of process on the superintendent of banks.

§ 354. Tennessee—Blue Sky Law.—Before offering or attempting to sell any stocks, bonds, or other securities of any kind or character or any lands or town lots to any person or persons, or transacting any business whatever in the state of Tennessee excepting that of preparing the documents hereinafter required, every such investment company, domestic or foreign, shall file in the office of the commissioner of insurance and banking of this state, together with a filing fee of one hundred dollars (\$100), the following documents, to wit:

A statement showing in full detail the plan upon which it proposes to transact business.

A copy of all contracts, bonds, or other instruments which it proposes to make with or sell to its contributors.

A statement which shall show the name and location of the investment company, and an itemized account of its actual financial condition and the amount of its property and liabilities, and such other information touching its affairs as said commissioner of insurance and banking may require.

If such investment company shall be a copartnership or an unincorporated association, it shall also file with the commissioner of insurance and banking a copy of its articles of copartnership or association and all other papers pertaining to its organization; and if it be a corporation organized under the laws of Tennessee, it shall also file with the commissioner of insurance and banking a copy of its articles of incorporation, constitution, and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory, or government, incorporated or unincorporated, it shall also file with the said commissioner of insurance and banking a copy of the laws of such state, territory or government under which it exists or is incorporated; and also a copy of its charter, articles of incorporation, constitution, and by-laws and all amendments thereof which have been made, and all other papers pertaining to its organization.

In addition to the payment of said filing fee, such investment company shall bear any expense necessary in the judgment of the commissioner to investigate the value and safety of the investment securities intended to be vended in this state.

All of the above described papers shall be verified by the oath of a member of a copartnership or company if it be a copartnership or company, or by the oath of a duly authorized officer if it be an incorporated or unincorporated association. All such papers, however, as are recovered or are on file in any public office shall be further certified to by the officer of whose records or archives they form a part as being correct copies of such records or archives.

Every foreign investment company must also file its written consent to service of process on the commissioner of insurance and banking.

§ 355. Texas—Blue Sky Law.—Every concern or corporation which shall commence the transaction of business in the state of Texas, shall before offering for sale, directly or indirectly, through itself, its agents or employees, or through any holding company, sales company or any character of person or association, any stock, and before transacting any business in this state, file in the office of the secretary of state, together with a fee equal in amount to the filing fee of a private corporation having capital stock and surplus of like amount, the following: (This requirement as to fees shall not apply to corporations, by reason of the existing requirements as to the payment of filing fees upon obtaining charters and permits from the secretary of state.)

1. An application for a permit to sell any of the securities mentioned herein, or any other securities offered, or to be offered for sale, and for the transaction of any and all other business in the state of Texas. Said application must show the name under which such business is to be conducted, its location and general purpose, the age, occupation and general qualifications of such trustees or managing officers, and also fully the business in which each has been engaged for the last five years immediately preceding the filing of such application.

2. A copy of its articles of association, partnership, agreement, constitution, by-laws, or any other contract, agreement or other

form of organization under which business is to be transacted, and all amendments thereto, showing the county or counties in which such instruments are filed, or to be filed for record.

3. Copies of stock certificates, bonds, debentures, or other securities offered, or to be offered for sale, or other disposition, together with copies of application blank for such securities. Such application must show the capital stock, par value of such stock, the price at which the same is to be sold, the commissions to be paid for the sale thereof, the amount of such stock or other interest therein issued, or to be issued for promotion, compensation, or other purposes.

4. A detailed statement showing the assets and liabilities of such issuer, together with a profit and loss statement.

No permit shall be granted to a non-resident or foreign concern until it shall file in the office of the secretary of state, an instrument constituting and appointing him its true and lawful attorney, upon whom process may be served in any action that may be brought against it.

Where the promoter or promoters of any development proposition, or the originator or originators of any patent process, own no assets but a meritorious proposition, he or they, upon the presentation of the proper facts to the secretary of state, and securing his approval and filing a bond, may, in the discretion of said officer, secure a permit, conditioned that all moneys received for the sale of stocks or units of interest shall be placed in escrow with the secretary of state until the proposed amount of stock necessary to finance such undertaking has been sold and the money paid in therefor.

§ 356. Utah—Blue Sky Law.—All securities required to be registered before being sold in the state of Utah, and not entitled to registration by notification shall be registered only by qualification in the following manner:

The state securities commission shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which it may require such applications to be submitted. Applications shall be in writing and shall be duly signed by the applicant and sworn to by any person having knowledge of the facts, and filed in the office of the commission and may

be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state of Utah. The commission may require the applicant to submit to the commission the following information respecting the issuer and such other information as it may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered:

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation or association or trust organized or existing under the common law, of all partners, if the issuer be a partnership, and of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The purposes of incorporation (if incorporated) and the general character of the business actually to be transacted by the issuer, and the purpose of the proposed issue.

(d) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on the day not more than sixty (60) days prior to the date of filing such balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made; and a copy of all circulars, prospectuses, advertisements or other descriptions of such securities then prepared by or for such issuer and/or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this state.

(e) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.

(f) A statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(g) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment.

(h) The amount of capital stock which is to be set aside and

disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(i) If the issuer be a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments and of its existing by-laws, if not already on file in the office of the secretary of state of this state. If the issuer be a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer be a partnership or an unincorporated association, or joint stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office of the secretary of state of this state.

All of the statements, exhibits and documents of every kind required by the commission except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commission.

At the time of filing the information, the applicant shall pay to the commission a fee of one-tenth of one per cent of the aggregate par value of the securities to be sold in the state of Utah, for which the applicant is seeking registration, but in no case shall such fee be less than ten dollars nor more than two hundred dollars. In case of stock having no par value the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock.

Securities entitled to registration by notification shall be registered by the filing by the insurer or by any registered dealer interested in the sale thereof in the office of the commission of a statement with respect to such securities containing the following:

- (a) Name of issuer.
 - (b) A brief description of the security including amount of the issue.
 - (c) Amount of securities to be offered in the state.
 - (d) A brief statement of the facts which show that the security falls within one of the classes entitled to registration by notification.
 - (e) The price at which the securities are to be offered for sale.
- The filing of such statement in the office of the commissioner

and the payment of the fee hereinafter provided shall constitute the registration of such security. Upon such registration, such securities may be sold in the state of Utah by any registered dealer, subject, however, to the further order of the commission.

Upon any application for registration by notification made by any issuer and upon any application for registration by qualification, whether made by an issuer or registered dealer, where the issuer is not domiciled in the state of Utah, there must be filed with such application the written consent to service of process on the director of the state securities commission.

§ 357. Vermont—Blue Sky Law.—Before offering or attempting to sell any lands situated outside the state of Vermont, or stocks, bonds or other securities of any kind or character other than those specifically exempted, and before transacting any business whatever in this state, every such investment company, domestic or foreign, shall file in the office of the bank commissioner, together with a filing fee of thirty-five dollars, the following documents: A bond to the state for such amount as said bank commissioner may require, not more than twenty-five thousand dollars and not less than one thousand dollars, with such securities or security as he may approve, conditioned for compliance with the laws of this state affecting such investment companies; a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, bonds or other instruments which it proposes to make with or sell to its contributors; a statement showing the name and the location of the investment company, and an itemized account of its actual financial condition, and the amount of its property and liabilities, and such other information touching its affairs as said bank commissioner may require. If such investment company be a copartnership or an unincorporated association, it shall also, when requested in writing by the bank commissioner, file with him a copy of its articles of copartnership or association, and all other papers pertaining to its organization, and if it be a corporation organized under the laws of Vermont, it shall also, when requested in writing by the bank commissioner, file with him a copy of its articles of incorporation, constitution and by-laws, and of all other papers pertaining to its organization. If it be an investment company, incorpo-

rated or unincorporated, organized under the laws of any other state or government, it shall also, when requested in writing by the bank commissioner, file with him a copy of the laws of such state or government, and also a copy of its charter, articles of incorporation, constitution and by-laws and of all amendments thereof which have been made, and of all other papers pertaining to its organization. All of the above described papers, except charters or articles of association of a domestic corporation required to be filed with the secretary of state of this state shall, if it be a copartnership or company, be verified by the oath of a member thereof, or, if it be an incorporated or unincorporated association, by the oath of a duly authorized officer. The bank commissioner may, in his discretion, waive the filing of any of the papers, bonds or documents hereinbefore described.

Every foreign investment company shall file with the secretary of state a stipulation appointing him as its attorney upon whom process against or notice to it may be served.

§ 358. Virginia—Blue Sky Law.—It is unlawful for any promoter, which term includes any person, agent, broker, partnership, association or corporation, to sell or offer for sale any speculative securities in the state of Virginia until the said promoter shall have first applied for and secured from the state corporation commission, hereinafter called the commission, a permit to do so, and no such permit shall be granted until there shall have been filed with the commission by the applicant and made a part of such application, duly sworn to:

(a) A copy of the securities so to be promoted and when applicable a plat of the lands to be sold.

(b) A statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest of lien, authorized or issued by any such person or company.

(c) If such securities be secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon, if any.

(d) Any abstract and a certificate of title may be required in any case where the commission deems necessary, and if the securities to be sold be lands or an interest in lands an abstract of title thereto and the certificate of a competent attorney at law as to the title to such lands shall be filed unless the commission shall for good cause shown dispense with it.

(e) A full statement of facts showing the gross and net earnings, if any, of any person or company making, issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien.

(f) All material facts in the possession of such promoter relative to the character or value of such securities or of the property or earning power of the person or company making, issuing or guaranteeing the same.

(g) A copy of any prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used, unless the same has been filed hereunder, but same may be amended from time to time, by filing copies of the amendments with the commission.

(h) The names, addresses, and selling territory in this state of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statement with respect to them, together with satisfactory evidence of their good character, has been filed hereunder and there shall have been paid to the commission a registration fee of twenty-five dollars for each such agent; provided, however, that if such agent's license shall be granted on or after November first of any year the fee for such license shall be the sum of fifteen dollars. The payment of such fee shall be payment in full of all fees for registration of such agent for the sale of any properly licensed issue of securities, until and including the first day of May next following:

(i) The name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the officers and directors or trustees, if the promoter be a corporation or association.

(j) A statement showing in detail the plan upon which the business enterprise is to be conducted.

(k) The articles of copartnership or association and all other

papers pertaining to its organization, if the securities be issued or guaranteed by a copartnership or unincorporated association.

(l) A copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; provided, however, that if the corporation has not been chartered, a copy of the proposed charter and proposed by-laws shall be filed.

(m) A copy of the contract to be used in taking subscriptions for such securities wherein shall be set out a complete and accurate statement, without unnecessary verbiage, of any stock or security of the corporation whose securities are being offered for sale, which has been or is proposed to be issued for any consideration, other than par value or more in money.

(n) If the securities be lands or interests in lands, a statement as to the fixed price or the maximum and minimum prices at which such lands or interests in lands are to be offered or sold.

(o) A full statement of the exact amount which is being paid, or is proposed or promised or contracted to be paid, directly or indirectly in money, securities or otherwise for the promotion of such corporation or the flotation of such securities, either directly or indirectly, to any person whatsoever.

(p) Any other information concerning the said promotion, its assets or the persons interested therein, which the commission may require.

(q) A filing fee of fifty dollars.

(r) In any case the commission shall have the right to require of any promoter either before granting a permit or after granting a permit for the sale of speculative securities a bond, the form whereof shall be prescribed and the surety approved by the commission, penalty whereof shall be fixed by the commission at not more than twenty per centum of the sales price of the securities issued or proposed or authorized to be issued. The said bond shall be with surety and payable to the commonwealth, conditioned that the facts set forth in the application for such permit and in all other documents required by this act to be filed with the commission are true, and that the provisions of this act shall be strictly complied with, and that all moneys from the sale of such securities will be used for the proper purpose or purposes as set forth in the security sold and in the papers filed with the commission; and that the contract of the promoter as set forth in the securities issued

will be complied with. Except when the surety offered be a surety company authorized to do business in this state, it shall be the duty of the commission to satisfy itself that such surety is amply solvent before accepting the same.

When the application shall have been approved by the commission, the applicant shall before receiving a permit to sell speculative securities in the state of Virginia, pay a license fee, which license fee shall be computed at the rate of one-fourth of one per centum upon the par value of all securities permitted to be sold in the state; provided, however, that if the speculative security has no par value such fee shall be based on the selling price of the security. The maximum fee to be charged or collected hereunder shall not exceed five hundred dollars. The amount of the filing fee hereinbefore provided for shall be deducted from the amount of license fee so ascertained.

Every foreign promoter before being granted a permit to sell or offer for sale any speculative securities in the state of Virginia, must also file in duplicate with the commission his or its written consent to service of process upon the secretary of the commonwealth.

§ 359. Washington—Blue Sky Law.—No company shall sell, or offer for sale, negotiate for the sale of, or take subscriptions for any security of its own issue, until it shall have first applied for and secured from the secretary of state a permit authorizing it so to do. All applications shall be in writing, verified as provided by the statutes of the state of Washington for the verification of pleadings, and filed in the office of the secretary of state.

(1) Application shall set forth:

(a) The names, addresses and occupations of the officers of the company;

(b) The location of the office of the company;

(c) A statement of the assets and liabilities of the company as of a date within thirty days prior to the filing of its application, or such reasonable statement thereof as shall be prescribed by the secretary of state;

(d) A statement of the plan upon which the company proposes to transact business;

(e) The number of shares in the treasury of the company and the amount to be paid agents for the sale of stock;

(f) A copy of any security the company proposes to issue, and of any contract it proposes to make concerning the same;

(g) A copy of any circular, prospectus, advertisement, or other advertising matter which is proposed to be issued in connection with the sale of its securities;

(h) Any such additional information concerning the affairs of the company as the secretary of state may reasonably require.

(2) If the applicant be a copartnership or an unincorporated association or joint stock company, it shall file with its application a copy of its articles of copartnership or association, and all other papers pertaining to its organization.

(3) If the applicant be a trustee, it shall file with its application a copy of all instruments by which the trust is created and in which it is accepted, acknowledged and declared.

(4) If the applicant be a corporation, it shall file with its application a copy of all minutes of any proceedings of its directors or stockholders or members relating to or affecting the issue of such securities, and also a copy of its articles of incorporation and of its by-laws and of any amendments thereto.

If the applicant be a corporation or association organized under the laws of any other state, territory or government, it shall also file, with its application a certificate executed by the proper officer of such state, territory or government showing that such applicant is authorized to transact business in such state, territory or government; and also file, in such form as the secretary of state may prescribe, its written instrument, irrevocably appointing the secretary of state and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it arising out of or founded upon the sale of securities within this state may be served, with the same effect as if said corporation or association were organized or created under the laws of the state of Washington and had been lawfully served with process therein.

The secretary of state shall charge the following fees:

(1) For filing an application for permit to issue security ten dollars (\$10) for all companies whose capitalization is one hundred thousand dollars (\$100,000) or less, and twenty-five dollars (\$25)

for all companies whose capitalization is over one hundred thousand dollars (\$100,000).

(2) For filing an application for a broker's certificate twenty-five dollars (\$25), and ten dollars (\$10) for each and every year after the first year.

(3) For filing an application for an agent's certificate five dollars (\$5), and two dollars (\$2) for each and every year thereafter.

§ 360. West Virginia — Blue Sky Law. — No securities not exempted shall be sold within the state of West Virginia unless such securities shall have been registered by notification or by qualification. Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof in the office of the commissioner of securities of a statement with respect to such securities containing the following:

(a) Name of issuer.

(b) A brief description of the security including amount of the issue.

(c) Amount of securities to be offered in the state.

(d) A brief statement of the facts which show that the security falls within one of the classes entitled to registration by notification.

(e) The price at which the securities are to be offered for sale.

The filing of such statement in the office of the commissioner and the payment of the fee shall constitute the registration of such security. Upon such registration, such securities may be sold in this state by any registered dealer giving proper notice.

All securities required to be registered before being sold in the state of West Virginia, and not entitled to registration by notification shall be registered only by qualification.

The commissioner shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which he may require such applications to be submitted. Applications shall be in writing and shall be duly signed by the applicant and sworn to by any person having knowledge of the facts, and filed in the office of the commissioner and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within

the state of West Virginia. The commissioner may require the applicant to submit to him the following information respecting the issuer and such other information as he may in his judgment deem necessary to enable him to ascertain whether such securities shall be registered:

(a) The names and addresses of the directors, trustees and officers, if the issuer be a corporation or association or trust organized or existing under the common law, of all partners, if the issuer be a partnership, and of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The purposes of incorporation (if incorporated) and the general character of the business actually to be transacted by the issuer, and the purpose of the proposed issue.

(d) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty days prior to the date of filing such balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; copy of the security for the registration of which application is made; and a copy of all circulars, prospectuses, advertisements or other descriptions of such securities then prepared by or for such issuer and or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this state.

(e) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.

(f) A statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(g) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment.

(h) The amount of capital stock which is to be set aside and

disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(i) If the issuer be a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments and of its existing by-laws. If the issuer be a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer be a partnership or an unincorporated association, or joint stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization. All of the statements, exhibits and documents of every kind required by the commissioner except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commissioner. With respect to securities required to be registered by qualification, the commissioner may by order duly recorded fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

At the time of filing the information, as hereinbefore prescribed the applicant shall pay to the commissioner a fee of one-twentieth of one per cent of the aggregate par value of the securities to be sold in the state of West Virginia, for which the applicant is seeking registration, but in no case shall such fee be less than twenty-five dollars nor more than three hundred dollars. In case of stock having no par value the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock.

Upon any application for registration by notification made by an issuer and upon any application for registration by qualification whether made by an issuer or a registered dealer, where the issuer is not domiciled in the state of West Virginia, there must be filed with such application the written consent of the issuer to service of process on the commissioner of securities.

§ 361. Wisconsin—Blue Sky Law.—No company, broker or other person, directly or through an agent, shall in the state of Wisconsin, sell or take subscriptions for any security for the sale

of which a permit has not theretofore been issued, until a permit has been issued by the railroad commission authorizing the sale of such security. The application to secure such permit shall be verified and filed in the office of the commission; and shall state such facts, as the commission may require. And the commission may among other things require the names and addresses of the officers of the company and the location of its office; its income account if the company shall have been in operation prior to the making of the application; the company's assets and liabilities, together with an explanation of each item, and a detailed statement of the plan upon which the company proposes to transact business; a copy of any security the company proposes to issue and of any contract it proposes to make concerning the issuance of its securities and of any prospectus, pamphlet or advertising matter proposed to be used in connection with the sale of the company's securities; and an inventory with an appraisement showing the value of the assets described in such inventory, the amount and nature of securities issued for and the purchase price of any patent right, copyright, trademark, process or good will, or for promotion fees or expenses or for other intangible assets. The appraisers shall verify the appraisement and state therein their experience and qualifications to value such property and all other facts and considerations on which their estimate of value is predicated.

If the applicant be a partnership, or an unincorporated association, trust or joint stock company, there shall be filed with the application a copy of its articles of partnership or association, or any other papers pertaining to its organization which may be required by the commission. If the applicant be a trustee, there shall be filed with the application a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared. If the applicant be a foreign corporation, or association, it shall file with the application a certificate of recent date executed by the proper officer of its home state, showing that such applicant is authorized to transact business therein; and before a permit is issued in the case of a corporation, a certificate of the secretary of state of Wisconsin that such foreign corporation has complied with the provisions of section 226.02. If not a corporation, but a non-resident, the applicant shall file its written instrument in such form as the commission may require irrevocably

appointing the secretary of the commission its true and lawful attorney upon whom all processes in any action or proceeding against it may be served.

The commissioner shall collect for each application for a permit to sell securities a filing fee of ten dollars, and before a permit is issued a further fee of fifty cents per thousand for each thousand dollars par value of each entire authorized issue of securities of which part or all may be permitted to be offered for sale in the state of Wisconsin, but in no case shall the fees be more than one hundred dollars for each such issue.

If any such securities shall have no par value, the price at which such applicant proposes to issue or sell the same shall be deemed the par value for the purpose of computing the fee to be paid by such applicant.

§ 362. Wyoming—Blue Sky Law.—It is unlawful for any person, copartnership, association, or corporation, hereinafter called the promoter, either as principal or through brokers or agents or as brokers or agents, to sell or offer for sale, or by means of any advertisements, circulars or prospectus, or by any other form of public offering, to attempt to promote the sale of any speculative securities in the state of Wyoming, unless there shall first have been filed with the secretary of state and with the county clerk of each county in which such speculative securities shall be sold or offered for sale: (1) A copy of the securities so to be promoted; (2) a statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien authorized or issued by any such person or company; (3) if such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon, if any; (4) a full statement of facts showing the gross and net earnings, actual or **estimated**, of any company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien; (5) all knowledge or information in the possession of such promoter relative to the character or value

of such securities or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) a copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) the names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statements with respect to them have been filed hereunder; (8) the name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per cent or more of the capital stock, if the promoter be a corporation or association; (9) a statement showing in detail the plan on which the business or enterprise is to be conducted; (10) the articles of copartnership or association, and all other papers pertaining to its organization, if the securities be made and issued by a copartnership or unincorporated association; (11) a copy of its charter or articles of incorporation if the securities be made and issued by a corporation; (12) a filing fee of twenty-five dollars (\$25) to be deposited with the secretary of state.

Every foreign corporation must also file its written consent to service of process upon the secretary of state.

CHAPTER XXV.

BLUE SKY LAWS (Continued).

- 363. Application for Leave to Issue and Sell Securities—In General.
- 364. Form—Statement to Securities Commission—Alabama.
- 365. Form—Application to Sell Securities in Arkansas.
- 366. Form—Petition for Leave to Issue and Sell Securities—California.
- 367. Form—Petition for Leave to Issue and Sell Securities—California.
[Another Form.]
- 368. Form—Certificate of Corporate Authority—California.
- 369. Form—Appointment of Agent for Service of Process—California.
- 370. Form—Issuer's Prospectus—Colorado.
- 371. Form—Consent and Agreement in re Service of Process—Florida.
- 372. Form—Application for Authority to Sell Securities—Georgia.
- 373. Form—Application for Registration as Dealer—Indiana.
- 374. Form—Registration by Qualification—Indiana.
- 375. Form—Escrow Agreement—Indiana.
- 376. Form—Consent to Be Sued by Service on Indiana Securities Commission.
- 377. Form—Bond to Be Submitted With Application for Registration as Dealer—Indiana.
- 378. Form—Issuer's Application to Sell Securities—Iowa.
- 379. Form—Appointment and Acceptance of Agent—Iowa.
- 380. Form—Resolution Appointing Agent for Service of Process—Iowa.
- 381. Form—Consent to Be Sued by Service of Process on Secretary of State—Iowa.
- 382. Form—Statement to Bank Commissioner—Kansas.
- 383. Form—Appointment of Agent—Kansas.
- 384. Form—Resolution Appointing Secretary of State as Agent—Kansas.
- 385. Form—Application to Sell Securities—Michigan.
- 386. Form—Resolution Authorizing Appointment of Agent—Michigan.
- 387. Form—Consent to Appointment of Agent for Service of Process—Michigan.
- 388. Form—Application for Registration of Securities—Minnesota.
- 389. Form—Notification of Intention to Sell Securities—Minnesota.
- 390. Form—Corporate Appointment of Attorney for Service of Process—Minnesota.
- 391. Form—Resolution Authorizing Appointment of Attorney—Minnesota.
- 392. Form—Application for Broker's License—Minnesota.
- 393. Form—Application for Sale of Securities—Nebraska.
- 394. Form—Dealer's Application for Registration—New Hampshire.
- 395. Form—Application for Registration of Securities—North Carolina.
- 396. Form—Statement to State Securities Commission—North Dakota.

- § 397. Form—Application to Sell Securities—Ohio.
- § 398. Form—Notice of Application for License—Ohio.
- § 399. Form—Proof of Publication of Notice of Application for License—Ohio.
- § 400. Form—Consent to Service and Jurisdiction—Ohio.
- § 401. Form—Statement to State Issues Commission—Oklahoma.
- § 402. Form—Dealer's Application—Oregon.
- § 403. Form—Declaration of Purpose to Engage in Business in Oregon.
- § 404. Form—Dealer's Preliminary Statement—Oregon.
- § 405. Form—Power of Attorney—Oregon.
- § 406. Form—Dealer's Application for Registration—Pennsylvania.
- § 407. Form—Appointment of Agent for Service of Process—Pennsylvania.
- § 408. Form—Application for Registration of Agent or Salesman—Pennsylvania.
- § 409. Form—Statement of Agent or Salesman—Pennsylvania.
- § 410. Form—Application for License to Sell Securities—Philippine Islands.
- § 411. Form—Application to Sell Securities—South Dakota.
- § 412. Form—Application for Qualification of Investment Company—Tennessee.
- § 413. Form—Appointment of Attorney—Tennessee.
- § 414. Form—Resolution Appointing Attorney—Tennessee.
- § 415. Form—Bond for Blue Sky Law Company—Tennessee.
- § 416. Form—Petition for License to Sell Securities—Vermont.
- § 417. Form—Application for Sale of Securities—Virginia.
- § 418. Form—Issuer's Preliminary Statement—Washington.

§ 363. Application for Leave to Issue and Sell Securities—In General.—No attempt has been made to give all the forms to be used in the various states in making application for leave to issue and sell securities. However, a sufficient number of forms will be found below to answer the purpose for most occasions by making slight changes in the forms as the wording of the particular statute might require. The required forms can be obtained in many of the states by writing to the "Blue Sky Department" of the particular state. In some states the forms can be obtained by writing to the secretary of state, in others by writing to the corporation commissioner, and in others by writing to the commissioner of banking.

§ 364. Form — Statement to Securities Commission — Alabama.

To the Securities Commission of the State of Alabama:

.....
 (Name of Company) } No.....

 (Address) }

Make the following statements and answers to the following questions in compliance with section 3 of an act of the Legislature of Alabama to prevent frauds and impositions upon the people of the State and to protect investors, approved Oct. 1, 1920.

[1] (a) Is the promoter an individual, a partnership, an unincorporated association, or a corporation?

Answer

(b) If promoter is an individual, a partnership or an unincorporated association, state fully in the space below the full names and addresses of all the members thereof, and how and to what extent each is financially interested:

Name.	Address.	How and to what extent financially interested.
.....
.....

(c) Attach hereto certified copies of the articles of copartnership, or association, and mark same "Exhibit X."

(d) Is the promoter a corporation?

Answer

(e) The is a corporation, incorporated under the laws of the State of, on the day of, 192...; its authorized capital stock is \$....., divided into shares of common and shares of preferred stock, with a par value of \$....., and that it has an authorized bond issue of \$.....

Attached hereto are certified copies of the charter and all existing by-laws of said corporation and marked respectively Exhibits "A" and "B."

[2] That the following is a true statement of its officers and directors and the names of all persons owning as much as ten per cent (10%) of its capital stock:

BONDS—Continued.		
	No. Shares	Actual Value
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals.....

[5] Attached hereto, marked Exhibit "C," is a statement describing fully the real estate, plant, equipment, good will, formulae, all patents or intangible assets, received in exchange for stock.

NOTE.—The department will insist on a full statement touching each item mentioned in this paragraph. Failure to comply will surely bring adverse action from the board.

[6] That the following is a complete and correct statement of its assets and liabilities:

(This must be filled out whether a corporation, a copartnership, or an unincorporated association, etc.)

ASSETS.		
	Amount	Write Nothing in this Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand.....
Cash in Banks
Other Assets as follows:
Total.....

LIABILITIES.		
	Amount	Write Nothing in this Column
Common Stock outstanding...
Preferred Stock outstanding..
Bonds outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus
Other Liabilities as follows:
Total.....

[7] That attached hereto, marked Exhibit "D," is a true and correct trial balance sheet of its books on the date of the above statement.

(This must be filled out whether a corporation, a copartnership, an unincorporated association, etc.)

[8] That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.			Profit.		
Carried to Surplus.....	.....	....	Undivided Profits, 19..	.....	....
Dividends, Common			Gross earnings. (Specify		
Stock.....per cent..	.....	....	sources) .....	.....	....
Dividends, Preferred					
Stock.....per cent..	.....	....	.....	.....	....
Interest paid on bonds..	.....	....	.....	.....	....
Interest borrowed money	.....	....	.....	.....	....
Operating expenses .....	.....	....	.....	.....	....
Commissions .....	.....	....	.....	.....	....
Salaries .....	.....	....	.....	.....	....
Gain .....	.....	....	Loss .....	.....	....
Total.....	.....	....	Total.....	.....	....

(This must be filled out whether a corporation, a copartnership, an unincorporated association, etc.)

(This must be complied with whether a corporation, a copartnership, an unincorporated association, etc.)

(This must be complied with whether applicant is a corporation, a copartnership, an unincorporated association, a person, etc.)

[12] That said "security" secured by
 (is or is not) (mortgage or other lien:
, a certified copy of which is hereto attached,
 specifying what kind of lien)
 and marked "Exhibit G." A complete detailed appraisal or valuation of all
 property covered by said mortgage or other lien is hereto attached and
 marked "Exhibit H." There is also hereto attached a statement of all mort-
 gages, liens or other incumbrances on said property, together with certified
 copies of said mortgages, liens, or other incumbrances, which are prior to
 the one hereinabove mentioned and marked "Exhibit G."

(This must be complied with whether applicant be a corporation, a copartnership, an unincorporated association, or a person, etc.)

[13] Are the securities hereinbefore mentioned, and proposed to be issued, sold or otherwise disposed of in Alabama, insured or guaranteed? Answer.....

If so, are same insured or guaranteed by a copartnership or association? Answer.....

If so, attach hereto certified copies of the articles of copartnership or association of the insurer or guarantor, and mark same "Exhibit I."

If there be any other papers pertaining to the organization of the guarantor or insurer not already hereto attached, then attach same hereto and mark same "Exhibit J."

(This must be answered and complied with whether applicant be a corporation, a partnership, an unincorporated association, a person, etc.)

[14] That the promotion expenses of the company will not exceed per cent of the capital stock. (There must also be included in this statement what arrangement, if any, has been made to absorb this expense. This must be answered whether applicant be a corporation, a copartnership, an unincorporated association, a person, etc.)

[15] That the following is the general plan upon which the company is doing and intends to do business and the purposes for which said securities are to be sold: (Make full statement. This must be answered whether a corporation, an unincorporated association, a copartnership, a person, etc.)

[16] That the following statement shows the full names of all fiscal agents, who will be authorized, under paragraphs 3 and 8 of Section 3 of an Act of the Legislature of the State of Alabama, to prevent frauds and impositions upon the people of the State and to protect investors, approved October 1, 1920, to handle the sale of, or to sell, or by or through whom there will be handled or sold, such proposed securities, together with the address and financial standing and selling territory of each of such agents, viz.:

AGENTS, FISCAL.				
NAME	ADDRESS	FINANCIAL STANDING		Selling Territory Given by Counties
		Assets	Liabilities	
.....
.....
.....
.....

Attach hereto and mark "Exhibit K" a complete financial statement by any and all such agents showing all assets and liabilities. Such statement must be verified under oath in person by such agent before a notary public and under seal.

(This must be filled out whether applicant be a corporation, a copartnership, an unincorporated association, or a person.)

[17] (a) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or pro-

motors relative to the character of such securities not hereinabove set out, viz.:

(b) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the value of such securities not hereinabove set out, viz.:

(c) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the character of the property of the person or persons, or of the company, making and issuing such securities, not hereinabove set out, viz.:

(d) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the value of the property of the person or persons, or company making and issuing such securities, not hereinabove set out, viz.:

(e) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the character of the property of the person or persons, or to the character of the property of the company, guaranteeing such securities, not hereinbefore set out, viz.:

(f) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the value of the property of the person or persons, or of the company, guaranteeing such securities, not hereinabove set out, viz.:

(g) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the character of the earning power of the person or persons, or of the company, guaranteeing such securities, not hereinabove set out, viz.:

(h) That the following is a full statement of all knowledge or information (specifying which) in the possession of such promoter or promoters relative to the value of the earning power of the person or persons, or of the company guaranteeing such securities, not hereinabove set out, viz.:

(Section 17, a-h, must be filled out whether applicant be a corporation, an unincorporated association, a copartnership or a person.)

[18] That it has adopted the following plan for the sale of its stock:

[19] That attached hereto, marked Exhibit "L," is a true and complete copy of subscription lists, of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this statement and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

That this statement shows fully and in detail any and all interest which the officer, agent, employee or promoter selling or contracting to sell such stock has in such sale.

[20] That applicants will enter into a bond with,

(name of surety company)

a surety company doing business in Alabama, in such sum as the President of the Commission may fix, as required by the provisions of paragraph thirteen (13) of section three (3) of an act of the Legislature of the State of Alabama to prevent frauds and impositions upon the people of the State and to protect investors, approved October 1, 1920.

[21] Accompanying this statement and made a part hereof by reference are copies of each public prospectus and all advertising matter used or that will be used by the said of and

(Address of its home office)

to be used in the State of Alabama, unless and until permission to use such other prospectus and other advertising matter, etc., has been had and obtained in writing from the proper authorities. All such public prospecti and advertising matter is hereto attached, and marked "Exhibit M."

[22] References:

NOTE.—Please give at least four references as to character, responsibility and financial standing of each director. Also eight references as to the company itself.

This company hereby agrees to pay all costs of examination and appraisal as provided for in House Bill No. 14, Alabama General Laws, Special Session 1920, and any and all future examinations, audits, etc., as provided by said law.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this the day of, 192....

(Seal)

.....
Company.

By.....

President.

Attest:

Secretary.

State of, County of, ss.

....., President, and, Secretary, of the Company, of, being of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached thereto are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me this the day of, 192....

My commission expires

.....
Notary Public.

(The foregoing verification, etc., to be used in case of a corporation.)

(The following spaces for signatures and certification will be filled out and used, where applicant is a copartnership, an unincorporated association, or a person.)

In Testimony Whereof, We have hereunto set our hands and
affixed our seals this the day of
192....

State of, County of, ss.

The foregoing, first having been duly sworn, depose
(Names of Applicants.)

and say that each one of them is of legal age, that they have each read
the foregoing application and know the contents thereof, and that the
statements and allegations therein contained and attached hereto are true.

Subscribed and sworn to before me this day of
....., 192....

.....
Notary Public.

My commission expires

§ 365. Form—Application to Sell Securities in Arkansas.

STATE OF ARKANSAS ARKANSAS RAILROAD COMMISSION Blue Sky Department

In the matter of the application of

.....
Name

.....
Address

for authority to sell its securities in Arkansas under
the provisions of Act approved March 24, 1915, and
as amended 1923.

} No.....

The Company of represents to the Arkansas
Railroad Commission:

1st. That its principal business office is located at, and that
it has branch offices at

2d. That it was on the day of, 19...,
under the laws of the State of with an authorized capital of
\$....., divided into shares of common and
shares of preferred, with a par value of \$..... each and that it has an
authorized bond issue of \$.....

3d. That the following is a full and correct statement of its capital
stock and securities on this date:

Authorized Capital.....	{	Preferred Stock, \$.....
		"No Par" Stock, \$.....
		Common Stock, \$.....
Issued and Outstanding.....	{	Common Stock, \$.....
		"No Par" Stock, \$.....
		Preferred Stock, \$.....
Bonds authorized		\$.....
Bonds issued		\$.....
Other securities called....., Authorized,		\$.....
Other securities called....., Issued,		\$.....

4th. That the following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.			
	No. Shares	*Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals.....

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.			
	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals.....

BONDS.			
	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing

BONDS—Continued.

	No. Shares	Actual Value	Remarks
Promotion
Commissions
Salaries
Dividends
Totals

5th. Attached hereto, marked Exhibit A, is a statement giving a true and complete list of the holders of the securities of this company, indicating the consideration which was given for same.

6th. Attached hereto, marked Exhibit B, is a statement describing fully the real estate, plant, equipment, patents, etc., received in exchange for stock.

7th. That the following is a complete and correct statement of its assets and liabilities:

ASSETS.

	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand
Cash in Banks
Other Assets as follows:
Total

LIABILITIES.

	Amount	Write Nothing in This Column
Common Stock outstanding...
Preferred Stock outstanding..
Bonds outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus
Other Liabilities as follows:
Total

8th. The attached hereto, marked Exhibit C, is a true and correct trial balance sheet of its books on the date of the above statement.

9th. That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.	Profit.
Carried to Surplus.....	Undivided Profits, 19..
Dividends, Common	Gross earnings. (Specify
Stock.....per cent..	sources)
Dividends, Preferred	
Stock.....per cent..	
Interest paid on bonds..	
Interest borrowed money	
Operating expenses	
Commissions	
Salaries	
Gain	Loss
Total.....	Total.....

10th. That attached hereto, marked Exhibit D, is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

11th. That the following is the general plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold:

12th. That it has adopted the following plan for the sale of its stock:

13th. That attached hereto, marked Exhibit E, is a blank certificate of its stock or other securities it desires to sell, together with a true copy of its subscription blank, and all other blanks used in connection therewith.

14th. That attached hereto, marked Exhibit F, is a true and complete copy of its constitution and by-laws or articles of copartnership.

15th. That attached hereto, marked Exhibit G, is a true and complete copy of its charter, or articles of association, further certified to as being a true copy by the recording officer of the State under which it is incorporated.

NOTE.—Questions Nos. 16 and 17 are for companies only which are incorporated under the laws of another state than Arkansas.

16th. That attached hereto, marked Exhibit H, is the written, irrevocable consent for service of process, as provided in section 5, Act of March 28th, 1913.

17th. That attached hereto, marked Exhibit I, is a certified copy of the resolution passed by its board of directors, authorizing the execution of the blank designated as Exhibit H.

18th. That the following is a true statement in regard to its officers and directors:

19th. That its securities will be sold for the following named prices and on the following terms, and will not be sold at any other price or on any others terms without the consent of the Arkansas Railroad Commission:

20th. That attached hereto, marked Exhibit J, is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

Remarks:

NOTE.—Give at least four references as to character, responsibility and financial standing of each director. Also eight references as to the company itself.

Wherefore, your petitioner, in view of the showing herein made, does respectfully pray that authority be granted it to sell its securities as follows: \$..... Common Stock, \$..... Preferred Stock, \$..... Bonds, and \$..... other securities, in accordance with the provisions of the above mentioned law.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company this the day of, 192....

(Seal)

.....
Company.

By.....

Attest:

President.

Secretary.

State of, County of, ss.

....., President, and, Secretary, of the Company, of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me this the day of, 192....

.....
Notary Public.

(My commission expires)

Fee of \$10 must accompany this application.

§ 366. Form—Petition for Leave to Issue and Sell Securities —California.

In the matter of the application of
 } Application.
 Inc. }
 for leave to issue and sell its securities.

To the Honorable Commissioner of Corporations of the State of California.

The application of, Inc., respectfully shows:

1. That applicant is a corporation incorporated under the laws of the state of California, on the day of, A. D. 19...; that its principal place of business is in the city of, county of, state of California.

2. That the authorized capital stock of applicant is twenty-five thousand dollars (\$25,000), divided into two hundred and fifty (250) shares, of the par value of one hundred dollars (\$100) each; that none of said stock has been issued.

3. That applicant proposes to sell its entire capital stock as follows:

One share to each of the following directors at par for cash:

....., one share \$100
, one share \$100
, one share \$100

and the balance, two hundred forty-seven (247) shares to the public at large, at par for cash.

4. That no previous sales of stock have been made; and no brokerage has been paid; and that applicant does not intend to pay any brokerage on the sale of said stock.

5. That applicant has not yet commenced business and has no assets except its unissued capital stock, and no liabilities.

6. That a general statement of the nature of applicant's business is as follows: Applicant proposes to carry on a general real estate, insurance and brokerage business. The management of the company will be actively in the hands of Mr. is now, and has been for fifteen years, engaged in the real estate, insurance and loan business. The money from the sale of stock will be used as working capital.

7. That it is intended that the permanent officers and directors shall be:; president and director;; vice-president and director;; secretary and director.

8. That applicant encloses herewith a copy of its articles of incorporation, marked Exhibit "A"; a copy of its by-laws, marked Exhibit "B"; a copy of all minutes of all proceedings of the directors, members or stockholders, relating to or affecting the issue of securities, marked Exhibit "C"; and a copy of the certificate of stock proposed to be issued by it, marked Exhibit "D."

Wherefore, applicant respectfully requests that a permit be issued

authorizing it to issue and sell shares of its capital stock as hereinbefore set forth.

....., Inc.
By....., President.

State of California, County of, ss.

....., being first duly sworn, deposes and says, that he is the president of, Inc., the applicant named in the foregoing application; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this day of
....., 19....

.....,
Notary Public in and for the County of,
State of California.

§ 367. Form—Petition for Leave to Issue and Sell Securities—California. [Another Form.]

In the matter of the application of } Application.
....., Inc. }
for leave to issue and sell its securities.

To the Honorable Commissioner of Corporations of the State of California.

The application of, Inc., respectfully shows:

1st. That its principal business office is located at, and that it has branch offices at

2d. That it was on the day of, 19..., under the laws of the State of with an authorized capital of \$....., divided into share of common and shares of preferred, with a par value of \$..... each and that it has an authorized bond issue of \$.....

3d. That the following is a full and correct statement of its capital stock and securities on this date:

Authorized Capital	{ Preferred Stock, \$.....
	{ "No Par" Stock, \$.....
	{ Common Stock, \$.....

Issued and Outstanding	{ Common Stock, \$.....
	{ "No Par" Stock, \$.....
	{ Preferred Stock, \$.....

Bonds authorized \$.....

Bonds issued \$.....

Other securities called, Authorized, \$.....

Other securities called, Issued, \$.....

4th. That the following is a complete and correct statement of its assets and liabilities:

ASSETS.	
Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand
Cash in Banks
Other Assets as follows:
Total

LIABILITIES.	
Amount	Write Nothing in This Column
Common Stock outstanding
Preferred Stock outstanding
Bonds outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve
Surplus
Other Liabilities as follows:
Total

5th. Attached hereto marked Exhibit A, is a true and correct trial balance sheet of its books on the date of the above statement.

6th. That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.		Profit.	
Carried to Surplus.....	.....	Undivided Profits, 192..	.....
Dividends, Common	.....	Gross earnings. (Specify	.....
Stock.....per cent..	.....	sources) .....	.....
Dividends, Preferred	.....		.....
Stock.....per cent..	.....		.....
Interest paid on bonds..	.....		.....
Interest borrowed money	.....		.....
Operating expenses ....	.....		.....
Commissions .....	.....		.....
Salaries .....	.....		.....
Gain .....	.....	Loss .....	.....
Total.....	.....	Total.....	.....

7th. That attached hereto, marked Exhibit B, is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

8th. That the following is the general plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold:

9th. That it has adopted the following plan for the sale of its stock:

10th. That attached hereto, marked Exhibit C, is a blank certificate of its stock or other securities it desires to sell, together with a true copy of its subscription blank, and all other blanks used in connection therewith.

11th. That attached hereto, marked Exhibit D, is a true and complete copy of its by-laws.

12th. That attached hereto, marked Exhibit E, is a true and complete copy of its charter, or articles of association.

NOTE.—Questions 13 and 14 are for companies only which are incorporated under the laws of another state than California.

13th. That attached hereto, marked Exhibit F, is the written, irrevocable consent for service of process, as provided in the California Securities Law.

14th. That attached hereto, marked Exhibit G, is a certified copy of the resolution passed by its board of directors, authorizing the execution of the blank designated as Exhibit F.

15th. That the following is a true statement in regard to its officers and directors:

NAME	ADDRESS	Number Shares and Bonds Owned			Actual Cash Invested in Company	Salary per Year	Estimate Net Worth	Time Devoted to Company
		Common	Preferred	Bonds				
President.								
Vice President.								
Secretary.								
Treasurer.								
General Manager.								
Trustees and Directors:								
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

16th. That its securities will be sold for the following named prices and on the following terms, and will not be sold at any other price or on any other terms without the consent of the Commissioner of Corporations:

17th. That attached hereto, marked Exhibit H, is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which anyone has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

18th. That attached hereto, marked Exhibit I, are true copies of all literature, advertising matter, or prospectuses used or to be used by this company.

19th. That attached hereto, marked Exhibit J, is a true and complete copy of all minutes of all proceedings of the directors, members or stockholders, relating to or affecting the issue of securities.

NOTE.—Give at least four references as to character, responsibility and financial standing of each director. Also eight references as to the company itself.

Wherefore, your petitioner, in view of the showing herein made, does respectfully pray that authority be granted it to sell its securities as follows: \$. Common Stock, \$. Preferred Stock, \$. Bonds, \$. other securities, in accordance with the provisions of the Corporate Securities Act.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company this the day of, 192....

(Seal)
Attest:
Secretary.

.
Company.
By
President.

State of, County of, ss.

., President, and, Secretary, of the Company, of of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.
President.

.
Secretary.

Subscribed and sworn to before me this day of, 192....

.
Notary Public.

(My commission expires)

§ 368. Form—Certificate of Corporate Authority—California.

In the State Corporation Department of the State of California.
State of, ss.

I, (name and title of officer), of the state of, do hereby certify that I am, by the laws of said state, the custodian of the records of said state relating to the forfeiture or suspension of corporate charters, or the right of corporations to transact business in said state, and am the proper officer to execute this certificate.

I further certify that is a corporation duly organized and existing under and by virtue of the laws of said state of and that said corporation is at the date of this certificate duly authorized to exercise therein all of the powers recited in its charter or articles of incorporation, and to transact business in said state.

In Witness Whereof, I have hereunto set my hand and
affixed my official seal at in said state of
this day of, 19....

Official Seal.

.....
(Title of officer.)

§ 369. Form—Appointment of Agent for Service of Process—California.

Know All Men by These Presents: That pursuant to the Corporate Securities Act of the state of California, a corporation organized and existing under and by virtue of the laws of the state of, carrying on business in the state of California, with offices at in the city of, county of, state of California, and having applied or being about to apply to the commissioner of corporations of said state of California for a permit authorizing it to sell securities of its own issue in said state of California, has irrevocably constituted and appointed and by these presents does irrevocably constitute and appoint H. L. Carnahan, as such commissioner of corporations of the state of California, and his successor or successors in said office, its true and lawful attorney upon whom all process in any action or proceeding against it may be served with the same effect as if said corporation were organized or created under the laws of the state of California and had been lawfully served with process therein.

Said corporation has further designated, and by these presents does designate, the following named person, to wit:, whose address is (street and number), (town or city), (state), as the person to whom a copy of every process served upon said commissioner of corporations in any action or proceeding against company shall be forwarded by mail, in accordance with the provisions of said act.

In Witness Whereof the said corporation, by a resolution of its board
33—Corporate Management

of directors, duly and regularly passed and adopted, has caused its corporate name to be hereunto subscribed and its corporate seal affixed by its president, and, secretary, this day of, A. D. 19....

..... (Name of corporation.)
 (Corporate Seal.) By..... President.
 By..... Secretary.

State of, County of, ss.

On this day of in the year 19., before me, a notary public in and for the county of, state of, personally appeared, known to me to be the president, and, known to me to be the secretary of the, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Notary public in and for the county of, state of
 My commission expires

State of, County of, ss.

....., being first duly sworn, deposes and says:

1st. That he is secretary of, the corporation that executed the foregoing power of attorney.

2d. That at a meeting of the board of directors of said corporation duly and regularly called and held on the day of, 19..., in accordance with the orders or resolutions of said board, the by-laws of said corporation, and the laws of said state, of which meeting notice was duly and regularly given and at which said meeting a quorum was present and acting, the following preamble and resolutions were duly and regularly adopted by the affirmative vote of directors, voting in favor thereof, to wit:

"Whereas, this corporation has applied or is about to apply to the commissioner of corporations of the state of California for a permit authorizing it to sell certain securities of its own issue in the state of California; now therefore,

"Be it resolved, that pursuant to the provisions of the Corporate Securities Act of the state of California,, as commissioner of corporations of the state of California, and his successor or successors in said office, be, and he is hereby appointed the true and lawful attorney of this corporation upon whom all process in any action or proceeding against it may be served with the same effect as if this corporation were organized or created under the laws of the state of California and had been lawfully served with process therein, and that service upon such attorney shall be deemed to be personal service upon this corporation.

"Be it further resolved, that, whose address is (street and number), (city), (state), be and he is designated as the person to whom a copy of every process served upon said commissioner of corporations in any action or proceeding brought or pending against this corporation, in the said state of California shall be

forwarded by mail, in accordance with the provisions of said Corporate Securities Act of said state of California.

"Be it further resolved, that the president and secretary of this corporation, as the act and deed of this corporation and in its corporate name, be and are hereby authorized to execute a power of attorney in writing in substantially the following form, to wit: (Here is inserted, in the resolution herein quoted, a true copy of the executed power of attorney to which this affidavit is attached.)

"Be it further resolved, that when said power of attorney shall have been so executed, and acknowledged, said secretary be and he is further authorized and directed to file the same in the office of the said commissioner of corporations."

3d. That said resolutions as herein above quoted and recited have been duly and regularly copied and entered at length in the minutes of said meeting of said board of directors.

4th. That the power of attorney to which this affidavit is annexed was executed by the president and secretary of said corporation and its corporate seal affixed thereto, pursuant to and in accordance with said resolution.

..... (Signature of affiant.)
Subscribed and sworn to before me this day of
....., 19....

.....
Notary Public in and for the County of,
State of

My commission expires

§ 370. Form—Issuer's Prospectus—Colorado.

STATE OF COLORADO
OFFICE OF SECRETARY OF STATE
DIVISION OF SECURITIES
(Use typewriter throughout)

Date of prospectus
State of, County of, ss.
Come now and
(Name of issuer)
(Principal officers or proposed principal officers)
Name Official Capacity
.....
.....
.....

and, being the directors (if trustees so state), of, a person, firm, copartnership, corporation, association, syndicate, joint stock company, common law trust, the undersigned being duly authorized to execute this application for and on behalf of said, do solemnly

swear that the answers to the questions herewith, and statements herein contained, and statements in exhibits attached hereto and made a part hereof, are true.

1. That aforesaid, as issuer, desires to undertake, by public and general offering, the sale and disposal of certain hereinafter mentioned securities in the State of Colorado, under and in compliance with the provisions of an act entitled "An Act to Regulate the Sale and Offering for Sale of Stocks, Bonds, and Other Securities in the State of Colorado, and Providing Penalties for the Violation Thereof," approved May 1, 1923, known as "The Securities Act," Chapter 168, Session Laws of Colorado, 1923, and for the purpose of complying with the provisions of said Act states:

2. That was organized under the laws of the State of (Name of issuer) on the day of, 19..., and has its principal office at, in the State of, and its principal office in Colorado at (Address)

3. That the issuer commenced business on the day of, 19....

4. That the following is information concerning the (If proposed officers so state) officers, partners, individuals, directors, trustees of the issuer:

Name	Address	Occupation
President,
Vice-President,
Secretary,
Treasurer,
General Manager,
Trustees or Directors:		
1.
2.
3.
4.
5.
6.
7.

PARTNERSHIP OR INDIVIDUAL

(Only to be filled out if issuer is partnership or individual. Designate which.)

Name of Partners or Individual	Address	Occupation
.....
.....

5. That the particulars of the Act or instrument under which the issuer is constituted and operating, and a description of the organization is as follows:

6. That the nature of the business or proposed business of the issuer is

as follows (if a corporation also give a concise statement of its powers and objects):

7. That the location, or the proposed location, of the undertaking of the issuer is as follows:

8. That the following is a full and correct statement of its capital stock or other securities on the above date:

Authorized Capital	{	Common Stock, \$.....	Par Value, \$.....
		Preferred Stock, \$.....	Par Value, \$.....
Securities Issued	{	Common Stock, \$.....	Par Value, \$.....
		Preferred Stock, \$.....	Par Value, \$.....
Paid-up Capital Stock ...	{	Common Stock, \$.....	Par Value, \$.....
		Preferred Stock, \$.....	Par Value, \$.....
Other Securities Authorized: {			
Other Securities Issued: {			

The respective voting rights, preferences, rights to dividends, profits or capital of each class with respect to each other class, are as follows:

9. That the following is a true and complete statement showing the consideration received from the securities issued and outstanding to date:

COMMON STOCK.

	No. Shares	*Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals.....

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with the value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents

Organizing .....	.....	.....	.....
Promotion .....	.....	.....	.....
Commissions .....	.....	.....	.....
Salaries .....	.....	.....	.....
Dividends .....	.....	.....	.....
Totals.....	.....	.....	.....

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals.....

10. That the following is a statement of the amount of the proposed issue and details of the principal purposes and uses to which the proceeds of the issue will be applied:

11. That the amount of the issuer's preliminary and organization expenses is \$.....
(If estimated so state)

12. That the following is information concerning the names and addresses, the amount paid or payable to any person or persons for the organization or promotion of the undertaking of the issuer and/or for the sale of the securities, with particulars of the services rendered by each person:

13. That the following is a true and correct statement of the amount and description of securities issued, or proposed to be issued, as fully paid for any consideration other than cash, and the particulars of such consideration:

14. The following is a true and correct statement of the names and addresses of the vendors of any property purchased or acquired, or proposed to be purchased or acquired which is to be, or has been, paid for, wholly or partly, out of such issue or the proceeds thereof, or the purchase or acquisition of which has not been completed at the date of the statement:

Name	Address
.....
.....
.....

15. That the following is a full, true, and correct statement of the amount paid or payable, as purchase money, in cash, securities or otherwise, for any property mentioned in Item 14, together with the amount paid or payable for good will, patent right, copyright, trademark, process,

or other intangible asset, and the nature of the interest of the issuer in such property:

(State whether interest or issuer is absolute, or conditional ownership under lease, option to purchase, or license of occupation; if more than one vendor, or if issuer is sub-purchaser, state amount payable to each vendor.)

16. That the following is a full and true statement of all particulars of the nature and extent of the interest of every director in the promotion of, or in the property proposed to be acquired by the issuer, and a statement of all sums paid or to be paid to him in cash or shares, or otherwise, by any person, either to induce him to become or to qualify him as a director, or otherwise for services rendered by him in connection with the promotion or formation of the issuer:

Wherefore, in view of the foregoing statement being made for the purpose of complying with the provisions of "An Act to Regulate the Sale and Offering for Sale of Stocks, Bonds and Other Securities in the State of Colorado, and Providing Penalties for the Violation Thereof," approved, May 1, 1923, being Chapter 168, Session Laws of Colorado, 1923, the undersigned respectfully pray that this prospectus be filed in the office of the secretary of state, and that a receipt issue in the name of the issuer above named.

In Witness Whereof, The said issuer, and all of its principal officers, directors and trustees have hereunto affixed their signatures, this day of, 19....

.....
.....
.....
.....
.....
.....

(Seal of Issuer)

Subscribed and sworn to before me, a notary public, this day of, 19....

My commission expires

(Notarial Seal)

Notary Public.

(If issuer is a non-resident of the State of Colorado a certificate designating the Secretary of State as agent of such issuer for the service of process must be filed with the prospectus. Blank forms for such certificate may be obtained at the office of the Secretary of State. The fee for filing the prospectus is \$10 and the fee for filing the certificate is \$10.)

§ 371. Form — Consent and Agreement in Re Service of Process—Florida.

State of, County of, ss.

Know All Men by These Presents, That the of, a corporation duly organized and existing under and by virtue of the laws of does hereby agree and consent that actions may be commenced against it in the proper court of any county in the state of Florida, in which

a cause of action may arise, or in which the plaintiff may reside, by the service of process upon the Comptroller of the state of Florida, hereby stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding upon this company as if personal service had been made upon the president or secretary, or any other duly authorized and accredited officer or agent of this company. Hereby further agreeing and stipulating that this consent and agreement is and shall remain irrevocable, as provided by Section 3 of Chapter 6422 of the Laws of Florida, relating to Investment Companies.

In Witness Whereof, We the president and secretary of said company, respectively, have hereunto set our hands and affixed the seal of said corporation on this the day of, A. D. 19....

(Seal)

.....

 By.....
 President.

 Secretary.

The foregoing agreement must be accompanied by a duly certified copy of the order or resolution of the board of directors of the corporation, authorizing the president and secretary to execute the same for and on behalf of the corporation.

§ 372. Form—Application for Authority to Sell Securities—Georgia.

BEFORE THE DEPARTMENT OF STATE OF THE STATE OF GEORGIA.

In the matter of the application of

.....	}	No..... General
Name		
.....		
Address		

for authority to sell its securities in Georgia.

The Company of represents to the Secretary of State of the State of Georgia:

1st., That its principal business office is located at, and that it has branch offices at

2d. That it was incorporated on the day of, 19..., under the laws of the State of, with an authorized capital of \$....., divided into shares of common and shares of preferred, with a par value of \$..... each; and that it has an authorized bond issue of \$.....

3d. That the following is a full and correct statement of its capital stock and securities on this date:

Authorized Capital	{ Common Stock, \$.....
	{ Preferred Stock, \$.....
Issued and Outstanding	{ Common Stock, \$.....
	{ Preferred Stock, \$.....
Bonds authorized	\$.....
Bonds issued	\$.....
Other securities called	Authorized, \$.....
Other securities called	Issued, \$.....

4th. That the following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.

	No. Shares	*Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued and should correspond with value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing

BONDS—Continued.			
	No. Shares	Actual Value	Remarks
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

5th. Attached hereto, marked Exhibit A, is a statement giving a true and complete list of the holders of the securities of this company, indicating the consideration which was given for same.

6th. Attached hereto, marked Exhibit B, is a statement describing fully the real estate, plant, equipment, patents, etc., received in exchange for stock.

7th. That the following is a complete and correct statement of its assets and liabilities:

ASSETS.		
	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand.....
Cash in Banks.....
Other Assets as follows:
Total.....

LIABILITIES.		
	Amount	Write Nothing in This Column
Common Stock Outstanding...
Preferred Stock Outstanding..
Bonds Outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus
Other liabilities as follows:
Total.....

8th. That attached hereto, marked Exhibit C, is a true and correct trial balance sheet of its books on the date of the above statement.

9th. That the following is a true statement of its profit and loss account for the months prior to this date:
(6 or 12)

Loss.		Profit.	
Carried to Surplus.....	.....	Undivided Profits, 192..	.....
Dividends, Common	.....	Gross earnings, (Specify	.....
Stock.....per cent.	.....	sources) .....	.....
Dividends, Preferred	.....	
Stock.....per cent..	.....		.....
Interest paid on bonds..	.....		.....
Interest borrowed money	.....		.....
Operating Expenses ....	.....		.....
Commissions .....	.....		.....
Salaries .....	.....		.....
Gain .....	.....	Loss .....	.....
Total.....	.....	Total.....	.....

10th. That attached hereto, marked Exhibit D, is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

11th. That the following is a statement showing in full detail the plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold:

12th. That it has adopted the following plan for the sale of its stock:

13th. That attached hereto, marked Exhibit E, are true copies of all contracts, bonds or other securities it desires to sell, or make with its contributors, together with a true copy of its subscription blank, and all other blanks used in connection therewith.

14th. That attached hereto, marked Exhibit F, is a true and complete copy of its constitution and by-laws or articles of copartnership.

15th. That attached hereto, marked Exhibit G, is a true and complete copy of its charter, further certified to as being a true copy by the recording officer of the state under which it is incorporated.

NOTE.—Questions Nos. 16 and 17 are for companies only which are incorporated under the laws of another State than Georgia.

16th. That attached hereto, marked Exhibit H, is the written, irrevocable consent for service of process as provided in Section 3, of Chapter 137 of the Acts of the Thirty-Fifth General Assembly.

17th. That attached hereto, marked Exhibit I, is a certified copy of the resolution passed by its board of directors, authorizing the execution of the blank designated as Exhibit H.

18th. That attached hereto, marked Exhibit J, are true copies of all literature or advertising matter used or to be used by such investment company.

19th. That the following is a true statement in regard to its officers and directors:

20th. That its securities will be sold for the following named prices and on the following terms, and will not be sold at any other price or on any other terms without the consent of the Secretary of State of the State of

21st. That attached hereto, marked Exhibit K, is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

Remarks:

NOTE.—Please give at least four references as to the character, responsibility and financial standing of each director. Also eight references as to the company itself.

Wherefore, your petitioner, in view of the showing herein made, does respectfully pray that authority be granted it to sell its securities as follows: \$..... Common Stock, \$..... Preferred Stock, \$..... Bonds, and \$..... other securities, in accordance with the provisions of the above mentioned law.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company this the day of, 19....

(Seal.)

.....
Company.

By.....

Attest:

.....
President.

.....
Secretary.

State of, County of, ss.

....., President, and, Secretary, of the Company of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me by,
and on this the day of, 19....

.....
Notary Public.

(My commission expires)

§ 373. Form — Application for Registration as Dealer — Indiana.

INDIANA SECURITIES COMMISSION

203 State House

Indianapolis

(Filing Fee \$25)

(All checks must be certified)

APPLICATION FOR REGISTRATION AS DEALER

Officer or attorney to whom communications shall be sent

.....

(Name)

.....

(Address)

State of, County of, ss.

To the Indiana Securities Commission, greeting:

Come(s) now and

being the and

(State official capacity) (State official capacity)

respectively of

.....

(Street address) (City) (State)

a person, firm, copartnership, corporation, association, said affiants being
duly authorized to execute this application for and on behalf of said

....., do solemnly swear that the answers to the questions herewith,

(Dealer)

and the statements herein contained, and statements in exhibits attached
hereto and made a part hereof, are true:

1. That aforesaid, as a dealer, desires to undertake, by public
and general offering, the sale and disposal of certain securities in the State
of Indiana, under and in compliance with the provisions of "An act defin-
ing securities, and supervising and regulating the disposition, sale, offer
for sale, negotiations or exchange thereof in the State of Indiana, providing
penalties for the violation of the act, creating a Securities Commission in
the State of Indiana, defining its powers and functions, providing for the
administration of the act, and repealing all laws not consistent or in con-
flict therewith," approved February 27, 1925, and for the purpose of obtain-
ing registration authorizing such sale hereby applies to the Indiana
Securities Commission of the State of Indiana, for registration as dealer.

2. That the following is information concerning the Officers, Partners,
Individuals, and Directorate of the applicant:

A. CORPORATION

(Only to be filled out if applicant is corporation.)

	Name	Address
President,		
Vice-President,		
Secretary,		
Treasurer,		
General Manager,		
Directors:		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

B. PARTNERSHIP OR INDIVIDUAL

(Only to be filled out if applicant is partnership or individual—designate which.)

	Name	Address
1.		
2.		
3.		
4.		
5.		
6.		
7.		

3. That applicant has been licensed or registered to sell or deal in securities in the following states:

4. That applicant has not been refused license or registration to sell or deal in securities in any state except the following:

5. That none of applicant's licenses or registrations have been revoked except the following:

6. That applicant is a member of the stock exchanges following:

A. Has applicant ever been refused membership in any exchange?
.....

B. If so, what exchange?

C. Has applicant ever been suspended from any exchange?

D. If so, name exchange and give cause for such suspension

7. If a foreign corporation, has such corporation qualified to do business in the State of Indiana under Foreign Corporation Law?

8. That the following is the general character of the business of the applicant:

9. Name at least two banks with which applicant has credit

10. That the class or classes of securities proposed to be dealt in are as follows:

11. That the following are suggested as five references as to applicant's business repute and the business repute of applicant's directors, officers or partners:

(Do not give attorneys or officers of the company as references.)

Name	Address
.....
.....
.....
.....
.....

12. That true answer is made to the question following:

A. Has this applicant ever been insolvent?

If the answer to "A" is "Yes," when (date) and in what court were proceedings instituted and what judgment was rendered by such court?

13. Attached you will find a copy of our last financial statement.

Wherefore, in view of the showing herein made, the person, firm, copartnership, corporation, does respectfully pray that it be granted

(Strike out words not applicable)

a registration as dealer in accordance with provisions of the above mentioned law.

In Witness Whereof, The said company, partnership, copartnership, corporation, individual, association has hereunto
(Strike out words not applicable) .

fixed $\left\{ \begin{array}{l} \text{its} \\ \text{their} \\ \text{his} \end{array} \right\}$ seal and signature.

..... (L.S.)
(Name or signature of Applicant)

By..... (L.S.)
(Partner, Individual, President)
(Strike out words not applicable)

(Corporation Seal)

By..... (L.S.)
(Partner, Individual, Secretary)
(Strike out words not applicable)

Subscribed and sworn to before me, a notary public, this
..... day of, 19....

(Notarial Seal)

.....

Notary Public.

Commission expires

State of, County of, ss.

I, a notary public in and for said county, in the state of do hereby certify that and, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged the said instrument as their free and voluntary act and deed, and the free and voluntary act and deed of each of them, for the uses and purposes therein set forth.

Given under my hand and seal, this day of, A. D. 19....

(Notarial Seal)

Notary Public.

My commission expires

§ 374. Form—Registration by Qualification—Indiana.

INDIANA SECURITIES COMMISSION

203 State House

Indianapolis

(Registration by Qualification)

Fee.....

(All checks must be certified)

Officer, Attorney or Underwriter to whom communication shall be sent

(Name)

.

(Address)

Indiana Securities Commission,

(Name of applicant)

The undersigned hereby applies for registration of the securities herein-after described and to that end submit the following information together with the necessary attached exhibits and makes the following representations of fact to induce you to grant such registration.

A. Name of issuer, a corporation, partnership, association or other organization, organized under the laws of the state of

(Date)

., or an individual. (Strike out part which does not apply.)

A-1. The following information as to the directors, trustees, officers, partners or individuals connected with the issue:

Name	Address
President,
Vice-President,
Secretary,
Treasurer,
General Manager,

Directors:

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

B. Location of principal office
 (P. O. address)

B-1. Location of principal office in Indiana (if any)
 (P. O. address)

C. Purpose for which incorporated or organized

C-1. General character of business

D. Statement as to capitalization:

1. Capital stock:

	Par value per share	Authorized	Issued	Unissued	Treasury	Total
Common,	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Preferred,						

No par

(Shares)

2. Balance sheet—(Of the issuer of a date not later than sixty days prior to date of filing).

Statement of assets and liabilities as of the day of,
 19...:

ASSETS

Current Assets—

Cash on hand and in banks	\$.....
Accounts receivable for merchandise sold	
Other accounts receivable	
Notes receivable for merchandise	
Other notes receivable	
	\$.....

Inventories—

Raw materials	\$.....
Work in process	
Finished materials	
Total inventories	

Other Quick Assets—
Sinking fund (explain):

.....	\$.....
.....
.....
Total quick assets	\$.....

Fixed Assets—

Land	\$.....
Buildings .....	.....
Less reserve for depreciation .....	.....
Machinery .....	.....
Less reserve for depreciation .....	.....
Equipment .....	.....
Less reserve for depreciation .....	.....
Total fixed assets .....	.....

Intangible Assets—

Good will	\$.....
Patents .....	.....
Leaseholds .....	.....
Other intangibles .....	.....
Total intangible assets .....	.....

Deferred Charges (itemize)—

.....	\$.....
Investments—	
Affiliated companies	\$.....
Other securities .....	.....
Total investments .....	.....

Other Assets (itemize)—

.....	\$.....
Stock subscriptions unpaid .....	.....
.....
Total assets	\$.....

LIABILITIES

Current Liabilities—

Accounts payable	\$.....
Notes payable to own banks .....	.....
Notes payable through brokers .....	.....
Notes payable for merchandise .....	.....
Notes payable .....	.....
Taxes accrued .....	.....
Payroll accrued .....	.....
Accrued expenses unpaid .....	.....
Reserve for taxes .....	.....

LIABILITIES—Continued.

Other reserves	
a.	
b.	
Other current liabilities	
Total current liabilities	\$.....
Fixed Liabilities—	
Bonded debt	\$.....
Mortgages and liens	
Total fixed liabilities .....	.....
Other Liabilities—	
.....	\$.....
.....	
.....	
Total .....	.....
Net Worth—	
Preferred stock outstanding	\$.....
Preferred stock subscribed but unissued	
Common stock outstanding	
Common stock subscribed but unissued	
Total	
Surplus—	
Appraisal surplus	\$.....
Earned surplus	
Undivided profits	
Unearned surplus	
.....	
Total liabilities	\$.....

That a true statement of net earnings and paid dividends for the last five years is as follows, to wit:

2-A. (A) Earnings: (If a new corporation, from date of organization.)
Fiscal year ends, 19.....

	19....	19....	19....	19....	19....
Gross, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Net, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....

(B) Dividends (as above):					
	19....	19....	19....	19....	19....
Amount, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Rate,%%%%%

2-B. That the following are true and exact answers to questions and true and exact statements of facts, concerning items in applicant's balance sheet:

(A) Sales for six months ended with the date of balance sheet.....
..... \$.....

(B) Merchandise—On what basis valued, cost, market or selling price?
.....

If any merchandise is held on consignment, state amount and circumstances

(C) Accounts and Notes Receivable—If any are past due or doubtful, state amount and circumstances

(D) If any amounts are due from officers, directors, employees, subsidiaries, branches or similar sources, state amounts, security and circumstances

(E) On What Terms Does the Applicant Sell?.....

(F) Contingent Liabilities:

Notes or accounts sold with endorsement	\$.....
Trade acceptances discounts	\$.....
As guarantor on bonds	\$.....
Accommodation endorsements	\$.....
Commitments	\$.....
Other contingent liabilities (describe)	\$.....

(G) Accounts and Notes Payable:

If any are past due, state amount and circumstances

During last fiscal year total current liabilities were at a maximum \$..... on and at a minimum \$..... on

(H) Reserves for Depreciation, Amortization and Obsolescence:

Provision is made for past due accounts and notes receivable, in the following amount, \$.....; for depreciation of merchandise, \$.....; land and buildings, \$.....; amortization of intangibles, \$.....; depreciation of equipment, \$.....; obsolescence, \$.....

(I) Applicant carries accounts at banks and has received lines of credit as follows:

BANK DEPOSITORIES	Lines of Credit	If No Line, Maximum Amounts Borrowed
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
Totals.....	\$.....	\$.....

(J) Does applicant give notes for merchandise?

(K) Are books audited by certified public accountant? If so, give name and address of accountant

(L) Give date of last audit and file copy of same, marked "Exhibit X." Date

E. Statement of income (for last fiscal year or if applicant has been in business less than a year for the entire time applicant has been so engaged).

1. Income from operations	\$.....
Cost of operations .....	.....
Gross operating income .....	.....
Sales expense	\$.....
Administrative .....	.....
Insurance .....	.....
Bad debts .....	.....
Taxes .....	.....
Sales discounts .....	.....
Total	\$.....
Net income from operation .....	.....
Other income .....	.....
Total	\$.....
Less: Interest on borrowed money	\$.....
Depreciation of inventories .....	.....
Other deductions .....	.....
Total	\$.....
Total net income for year	\$.....
2. Reconciliation of net income and surplus: .....	.....
Surplus as shown by balance sheet at beginning of year	.....
or period	\$.....
Additions during year: .....	.....
Total net income for year	\$.....
Other additions (itemize): .....	.....
(a)	\$.....
(b) .....	.....
Total additions	\$.....
Total	\$.....
Deductions during year: .....	.....
Dividends paid	\$.....
Other deductions (itemize): .....	.....
(a)	\$.....
(b) .....	.....
Total deductions	\$.....
Surplus as shown by balance sheet at close of year or	.....
period	\$.....
F. Information regarding security to be sold: .....	.....
1. Total issue .....	.....
2. Amount to be sold in Indiana .....	.....
3. Designation .....	.....
4. Sale price in Indiana .....	.....
5. Sale price in other states .....	.....
6. Rate of interest .....	.....
7. Call price .....	.....
8. Schedule of maturities .....	.....

F-1. Maximum commission or other remuneration to be paid for disposal

G. Detailed statement showing consideration having been received for outstanding securities:

COMMON STOCK.			
	No. Shares	Actual Value	Remarks
Actual Cash	\$.....
Notes.....
*Real Estate	*.....
*Plant.....	*.....
*Equipment	*.....
Patents.....
Organizing.....
Promotion.....
Other Intangible Assets
Commissions
Salaries.....
Dividends.....
Stock Subscriptions			
(Unpaid).....
Totals.....	\$.....

*Under remarks give assessed value.

PREFERRED STOCK.			
	No. Shares	Actual Value	Remarks
Actual Cash	\$.....
Notes.....
*Real Estate	*.....
*Plant.....	*.....
*Equipment	*.....
Patents.....
Organizing.....
Promotion.....
Other Intangible Assets
Commissions
Salaries.....
Dividends.....
Stock Subscriptions			
(Unpaid).....
Totals.....	\$.....

*Under remarks give assessed valuation.

H. 1. Number of shares and class of capital stock issued as promotion stock

2. Number of shares and class of capital stock that will be issued in the future for promotion

1. The following exhibits shall be filed with the applications:

1. Copy of security to be registered.

2. Copy of prospectus, circulars or any type of advertising material to be used in connection with the distribution of this security.

3. If real estate is listed in applicant's balance sheet under Paragraph D-2, submit two sworn appraisals on our Form 8-D 2.

4. Sworn copy of articles of incorporation and all amendments thereto, unless these are on file with the secretary of state of Indiana.

5. Sworn copy of applicant's by-laws and all amendments thereto.

6. If issuer is a trustee, there shall be filed a copy of all instruments by which the trust is created or declared, and in which it is accepted and acknowledged.

7. If the applicant is a partnership or incorporated association, or joint stock company, or any other form of organization whatsoever, there shall be filed a copy of its articles of partnership or association, and all other papers pertaining to its organization if not already on file in the office of secretary of state of the state of Indiana.

8. A copy of the last audit certified to by the person making same.

9. A so-called "Consent to Service" on our Form 9.

10. A fee computed on the basis of 1/20 of one per cent of the par value of the securities to be sold in Indiana (minimum \$25, maximum \$200). Uncertified checks will not be accepted.

11. If schedule G, H or H-2 show that stock has been or will be issued for any patent right, copyright trademark, process, lease, formulae, or good will or for promotion fees or expenses, or for other intangible assets, the applicant shall file all such securities in escrow with the commission under our escrow agreement as evidenced by Form 17.

All statements, exhibits and documents of every kind required to be furnished except properly certified public documents, shall be verified by the oath of the applicant or of the issuer.

(Either a registered dealer or an issuer may sign)

Signed.....

By.....

President, Vice-President, Secretary.

(Strike out words not applicable)

Subscribed and sworn to before me a notary public in and
for county, state of, this
day of, 19....

.....

Notary Public.

My commission expires

We, the undersigned being first duly sworn, depose and say: That the undersigned are the duly elected, qualified and acting officers of the within-named applicant, as per our signatures above and below; that we are familiar with the conduct of its business and affairs, and that we have investigated and know its financial condition; that we are fully qualified and competent to testify as to the truth of the facts called for by this application; that we have carefully examined all statements and answers in the within application and exhibits attached hereto and made a part hereof, and that each and all of the statements, answers and representations made are true, and that no material fact in answer to the several questions has been omitted; that copies of records, documents, and all other instruments filed herewith and hereby made a part hereof, are true and exact copies of originals of such records, documents and other instruments; that there has been no omission to state any fact which might affect the value, validity, and effect of the securities proposed in this application to be sold; and

we further say that there are no agreements, understandings or contracts, either verbal or written, express or implied, by which anyone has received or is to receive, directly or indirectly, any consideration in any manner whatever for the sale of the applicant's securities, or for its promotion, except as specified in this application and the exhibits attached hereto.

.....
(Individual, Partner, President)
(Strike out words not applicable)

.....
(Secretary, or Other Officer)

Subscribed and sworn to before me, a notary public, this
..... day of, 19....

(Notarial Seal)

.....
Notary Public.

My commission expires

State of, County of, ss.

I, a notary public in and for said county, in the state of, do hereby certify that and, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged the said instrument as their free and voluntary act and deed, and the free and voluntary act and deed of each of them, for the uses and purposes therein set forth.

Given under my hand and seal, this day of
....., A. D. 19....

(Notarial Seal)

.....
Notary Public.

My commission expires

§ 375. Form—Escrow Agreement—Indiana.

Whereas, desires to sell certain securities under the provisions of an act entitled "An act defining securities, and supervising and regulating the disposition, sale, offer for sale, negotiations or exchange thereof in the state of Indiana, providing penalties for the violation of the act, creating a securities commission in the state of Indiana, defining its powers and functions, providing for the administration of the act, and repealing all laws not consistent or in conflict therewith," approved February 27, 1925, and all acts amendatory thereof and supplemental thereto.

Whereas, Section 17 provides that securities "issued for any patent right, copyright, trademark, process, lease, formula or good will, or for promotion fees or expenses, or for other intangible assets" . . . shall be delivered in escrow to the commission under an escrow agreement that the owners of such securities shall not be entitled to withdraw such securities from escrow until all other stockholders of the same class, who have paid for their stock in cash, shall have been paid a dividend or dividends aggregating not less than six per cent in each of two (2) consecutive years, shown to the satisfaction of said commission to have been actually

earned on the investment of any common stock, so paid for in cash, and in case of dissolution or insolvency during the time such securities are held in escrow, that the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

Whereas, The securities described below have been issued in payment of such "patent right, copyright, trademark, process, lease, formula, good will or for promotion fees or expenses or for other intangible assets" as described in said section;

Now, therefore, In consideration of the benefits that will accrue to the issuer and to the undersigned by virtue of being permitted to file certain statements and documents in the office of the Indiana Securities Commission, pursuant to the provisions of the aforesaid act, and for other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby deposits with the Indiana securities commission the securities more fully described below and irrevocably consents and agrees that said securities are to be held subject to the provisions of the aforesaid act. Such securities being more fully described as follows, to wit:

.....

It is hereby stipulated and agreed by the undersigned that in case of dissolution or insolvency of the during the time such

(Name of issuer)

securities are held in escrow, the owners of such securities shall not participate in the assets of the corporation until after the owners of all other securities have been paid in full.

It is further understood and agreed by the undersigned that said securities deposited with said securities commission shall not be sold nor transferred or assigned directly or indirectly during the time said securities remain on deposit with the above named trustee, but that such deposit of such securities shall not affect the voting powers of the owners of such securities.

It is further understood and agreed by the undersigned that said securities deposited with the securities commission in escrow shall remain in escrow until a cash dividend or dividends aggregating not less than six per cent (6%) in cash in each of two (2) successive years, shall have been earned and paid as shown to the satisfaction of the securities commission.

It is further stipulated and agreed by and between the parties hereto that this stipulation shall be binding upon the heirs, administrators, executors, legatees, devisees and assignees of the undersigned.

In Witness Whereof, The parties hereto have hereunto set
their hands and seals this day of,
A. D. 19....

(Name)

(Address)

State of Indiana, County of, ss.

I,, a notary public in and for the county and state aforesaid, do hereby certify that personally appeared before me, known to me to be the same person.. whose name.. is (or are) subscribed to

the foregoing instrument, and acknowledged that ..he.. executed the same as free and voluntary act for the uses and purposes therein set forth,

In Witness Whereof, I have hereunto set my hand and
notarial seal this day of, A. D. 19....

(Notarial Seal)

My commission expires

.....

Notary Public.

This is to certify that the above described securities have been deposited in accordance with the terms of this agreement with the, to be irrevocably held until such time as the requirements of "The Indiana Securities Law" and the terms of this agreement have been complied with.

Dated at Indianapolis, Indiana, this day of, A. D. 19....

By

Escrow Officer.

The receipt of a true copy of the foregoing escrow agreement is hereby acknowledged this day of, A. D. 19....

.....

(Issuer)

By

§ 376. Form — Consent to Be Sued by Service on Indiana Securities Commission.

Know All Men by These Presents:

That the of, a company, partnership, copartnership,
(Strike out words not applicable)

corporation, individual, association, organized and doing business under and by virtue of the laws of the state of for the purpose of complying with the provisions of section 9 of an act entitled "An act defining securities, and supervising and regulating the disposition, sale, offer for sale, negotiations or exchange thereof in the state of Indiana, providing for the administration of the act, and repealing all laws not consistent or in conflict therewith," approved February 27, 1925, and all acts amendatory thereof and supplemental thereto does hereby make and give

{ its }
{ their } consent that suits and actions growing out of the violation of
{ his }
said act may be commenced against { it }
{ them } in the proper court of any
{ him }

county in said state of Indiana, in which a cause of action may arise against

{ it }
{ them } or in which the plaintiff in said action may reside, by the service
{ him }
of any process or pleadings authorized by the laws of said state of Indiana

on the securities commission of the said state of Indiana, and $\left\{ \begin{array}{l} \text{it} \\ \text{they} \\ \text{he} \end{array} \right\}$

further consent(s) that service of process in any action against them may be served upon the securities commission. It is hereby stipulated and agreed on the part of said company, partnership, co-partnership, corpora-

(Strike out words not applicable)

tion, individual, association, that such service of such process or pleadings on such securities commission shall be taken and held in all courts to be as valid and binding as if due service had been made upon such company, partnership, co-partnership, corporation, individual, association

$\left\{ \begin{array}{l} \text{itself} \\ \text{themselves} \\ \text{himself} \end{array} \right\}$ (Strike out words not applicable)

The consent herein given shall be deemed to be and is irrevocable.

In Witness Whereof, The said company, partnership, co-partnership, corporation, individual, association, has

hereunto affixed $\left\{ \begin{array}{l} \text{its} \\ \text{their} \\ \text{his} \end{array} \right\}$ seal and signature in accord-

ance with the resolution of the board of directors thereof authorizing the same.

..... (L. S.)

Name or signature of applicant.

(Corporation Seal)

By..... (L. S.)

Partner, President.

(Strike out words not applicable)

By..... (L. S.)

Secretary.

State of, County of, ss.

On this day of, A. D. 19..., personally appeared before me, a notary public in and for said county and state,, and, who are both known to me to be the persons whose signatures are attached to the foregoing instrument and who each acknowledges the same to be $\left\{ \begin{array}{l} \text{his} \\ \text{their} \end{array} \right\}$ act and deed, and the act and deed of the, for which each said person purports to act.

(Seal)

.....
Notary Public.

My commission expires

On motion, the following resolution was duly made, passed and adopted:

Whereas, This $\left\{ \begin{array}{l} \text{corporation} \\ \text{association} \end{array} \right\}$ proposes to make application to the Indiana securities commission for permission to sell securities within the state of Indiana, in accordance with the provisions of an act entitled, "An act defining securities, and supervising and regulating the disposition, sale, offer for sale, negotiations or exchange thereof in the state of Indiana,

Whereas, This { corporation }
 { association } is organized under the laws of the state of
..... and,

Be It Therefore Resolved, That the President and Secretary of this { corporation } be and they are hereby authorized and directed for and in { association }

I,, secretary of Company, hereby certify that the foregoing is a true and exact copy of a resolution of the board of directors of the Company which resolution was duly made, passed and adopted at a legal meeting of said board, held on the day of, A. D. 19..., that the passage of said resolution was in all respects regular and according to the by-laws of said { corporation } association { .

(Corporation Seal)

.....
Secretary.

§ 377. Form—Bond to Be Submitted With Application for Registration as Dealer—Indiana.

Know All Men by These Presents, That we,, of, as principal, and, a corporation of the state of, as surety, do hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, unto the state of Indiana, in the sum of five thousand dollars (\$5,000), for the payment of which well and truly to be made, we do hereby firmly bind ourselves.

The Condition of This Obligation Is Such, That whereas,, of, has been registered by the securities commission of the state of Indiana, as a dealer in stocks, stock certificates, bonds, debentures, collateral trust certificates and other securities, for the term ending December 31, 19....

Now, Therefore, if the said shall faithfully observe the provisions of "An act defining securities, and supervising and regulating the disposition, sale, offer for sale, negotiations or exchange thereof in the state of Indiana, providing penalties for the violation of the act, creating a securities commission in the state of Indiana, defining its powers and functions, providing for the administration of the act, and repealing all laws not consistent or in conflict therewith," and shall indemnify and save harmless any purchaser of such securities who suffers loss by reason of misrepresentations in the sale of such securities by as such dealer, or from any agent of said, then this obligation shall be void; otherwise it shall remain in full force and effect in law.

This bond terminates December 31, 19..., or it or any continuation or extension may be canceled by either the principal or the surety by giving thirty (30) days' notice thereof, in writing, to the other, and in the event of such cancellation which shall take effect at the expiration of said thirty (30) days and no claim being made hereunder, the surety shall refund the unearned premium therefor, provided that such cancellation is in advance approved in writing by the Indiana securities commission.

This bond by agreement of the parties may be extended from year to year to run concurrently with any extension or renewal of the principal's registration as a dealer in securities under the laws of the state of Indiana by a duly executed certificate expressing the terms and conditions of such extension; to the end that the suretyship hereby created may if desired be continuous from the date of original issuance of this bond and throughout such time as the principal may continue by re-registration or otherwise to be a registered dealer in securities under the laws of the state of Indiana and without any increase or duplication of the penalty hereof.

Signed and sealed this day of

Witness: , Principal.

..... , Surety.

..... By.....

The above bond is hereby approved:

..... , Commissioner of Securities.

§ 378. Form—Issuer's Application to Sell Securities—Iowa.

BEFORE THE DEPARTMENT OF STATE OF THE
STATE OF IOWA

In the matter of the application of

.....	}	No.....
Name		
.....		
Address		

for authority to sell its securities in Iowa under the provisions of Chapter 13b, Supplemental Supplement Code of Iowa and acts amendatory thereto.

The Company of represents to the secretary of state of the state of Iowa:

1. That it was incorporated under the laws of the state of, on the day of, 19...; that its principal place of business is located at, and that it has

(Street address) (City) (State)

branch offices at

Street address	City	State
.....
.....
.....
.....

2. That the following is a full and correct statement of its capital stock, bonds and other securities on this date:

	Number shares	Par value	Amount
Authorized Issue	Common Stock, .....	.....	.....
	Preferred Stock, .....	.....	.....
	"No Par" Stock, .....	.....	.....
	Bonds, .....	.....	.....
	Other securities, .....	.....	.....
		Total, \$.....	

	Number shares	Par value	Amount
Issued and Outstanding.	Common Stock, .....	.....	.....
	Preferred Stock, .....	.....	.....
	"No Par" Stock, .....	.....	.....
	Bonds, .....	.....	.....
	Other securities, .....	.....	.....
		Total, \$.....	

3. That the following is a true and complete statement as to the consideration received from the sale of stock, bonds and other securities heretofore issued:

COMMON STOCK.

	No.	*Actual	Ex-
	Shares	Value	hibit
Actual Cash....
Notes.....	A—1
Real estate.....	A—2
Plant.....	A—3
Equipment.....	A—4
Patents.....	A—5
Organization...	A—6
Promotion.....	A—7
Commissions...	A—8
Salaries.....	A—9
Dividends.....	A—10
Totals.....

PREFERRED STOCK.

	No.	*Actual	Ex-
	Shares	Value	hibit
Actual Cash....
Notes.....	B—1
Real Estate.....	B—2
Plant.....	B—3
Equipment.....	B—4
Patents.....	B—5
Organization...	B—6
Promotion.....	B—7
Commissions...	B—8
Salaries.....	B—9
Dividends.....	B—10
Totals.....

"NO PAR" STOCK.

	No.	*Actual	Ex-
	Shares	Value	hibit
Actual Cash....
Notes.....	C—1
Real Estate.....	C—2
Plant.....	C—3
Equipment.....	C—4
Patents.....	C—5
Organization...	C—6
Promotion.....	C—7
Commissions...	C—8
Salaries.....	C—9
Dividends.....	C—10
Totals.....

BONDS.

	No.	*Actual	Ex-
	Shares	Value	hibit
Actual Cash....
Notes.....	D—1
Real Estate.....	D—2
Plant.....	D—3
Equipment.....	D—4
Patents.....	D—5
Organization...	D—6
Promotion.....	D—7
Commissions...	D—8
Salaries.....	D—9
Dividends.....	D—10
Totals.....

OTHER SECURITIES.

(Designate Kind.)

	No.	*Actual	Ex-
	Shares	Value	hibit
Actual Cash....
Notes.....	E—1
Real Estate.....	E—2
Plant.....	E—3
Equipment.....	E—4
Patents.....	E—5
Organization...	E—6
Promotion.....	E—7
Commissions...	E—8
Salaries.....	E—9
Dividends.....	E—10
Totals.....

OTHER SECURITIES.

(Designate Kind.)

	No.	*Actual	Ex-
	Shares	Value	hibit
Actual Cash....
Notes.....	F—1
Real Estate.....	F—2
Plant.....	F—3
Equipment.....	F—4
Patents.....	F—5
Organization...	F—6
Promotion.....	F—7
Commissions...	F—8
Salaries.....	F—9
Dividends.....	F—10
Totals.....

*This column should in each instance specify the actual amount of cash or notes received, or the actual value of all other items for which stocks, bonds or other securities were issued.

Attach Exhibits explaining transaction in detail, giving basis for valuation placed on all items other than cash—designate each Exhibit as above indicated.

4. That the following is a complete and correct statement of its assets and liabilities on, 192...:

NOTE.—If the following form for asset and liability statement does not fit your case, you may substitute and attach your own form of statement, noting such fact across the face of the following form.

ASSETS.

Current Assets

Cash on hand and in banks.....	\$.....
Accounts receivable for merchandise sold.....	.....
Other accounts receivable .....	.....
Notes receivable for merchandise.....	.....
Other notes receivable .....	.....
Sinking Fund .....	.....
	\$.....

Inventories

Raw materials .....	.....
Work in process .....	.....
Finished materials .....	.....
Total Inventories .....	.....

Other Quick Assets

.....
.....
.....
Total Quick Assets .....	.....

Fixed Assets

Land .....	.....
Buildings .....	.....
Machinery .....	.....
Equipment .....	.....
Total Fixed Assets .....	.....

Intangible Assets

Good will .....	.....
Patents .....	.....
Leaseholds .....	.....
Other intangibles .....	.....
Total Intangible Assets .....	.....

Deferred Charges

Investments

Affiliated companies .....	.....
Other securities .....	.....
Total Investments .....	.....

Other Assets (Itemize)

.....
Stock subscriptions unpaid.....	.....
.....
Total Assets	\$.....

LIABILITIES.

Current Liabilities

Accounts payable	\$.....
Notes payable to own banks.....	.....
Notes payable through brokers.....	.....
Notes payable for merchandise.....	.....
Notes payable .....	.....
.....
Payroll accrued .....	.....
Accrued expenses unpaid .....	.....
Reserves .....	.....
.....
.....
Other Current Liabilities .....	.....
Total Current Liabilities	\$.....

LIABILITIES—Continued.

Fixed Liabilities		
Bonded debt .....	.....
Mortgages and liens.....	.....
Total Fixed Liabilities .....	.....	.....
Other Liabilities		
.....	
.....	
.....	
.....	
Total .....	.....	.....
Net Worth		
Preferred stock outstanding .....	.....
Preferred stock subscribed but unissued..	.....
Common stock outstanding.....	.....
Common stock subscribed but unissued...	.....
Total .....	.....
Surplus		
Appraisal surplus .....	.....
Earned surplus .....	.....
Undivided profits .....	.....
Unearned surplus .....	.....
Total Liabilities .....	.....	\$.....

(Totals of Assets and Liabilities should balance.)

Do you consider all of notes receivable and accounts receivable collectible?

How did you arrive at valuation of items listed under "Inventories"?

Indicate as to basis for valuations placed on items listed under "Fixed Assets," "Intangible Assets" and "Investments"

5. That attached hereto, marked Exhibit C, is a true and correct balance sheet of its books on the date of the above statement.

6. That the following is a true statement of its profit and loss account for the fiscal year terminating, 19....

(Month) (Date)

NOTE.—Statement furnished should be within 60 days of the date of this application.

Loss.		Profit.	
Carried to Surplus.....	.....	Undivided Profits, 19..	.....
Dividends, Common	.....	Gross earnings. (Specify	.....
Stock.....per cent..	.....	sources) .....	.....
Dividends, Preferred	.....	
Stock.....per cent..	.....	.....	.....
Interest paid on bonds..	.....	.....	.....
Interest borrowed money	.....	.....	.....
Operating Expenses ....	.....	.....	.....
Commissions .....	.....	.....	.....
Salaries .....	.....	.....	.....
Gain .....	.....	Loss .....	.....
Total.....	.....	Total.....	.....

7. That the fiscal year ends on the day of of each
(Date) (Month)
year. That its earnings for the past five years have been:

	19....	19....	19....	19....	19....
Gross, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Net, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....

and that the following dividends have been paid:

	19....	19....	19....	19....	19....
Amount, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Rate, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....

8. That attached hereto, marked Exhibit D, is a true and complete state-
ment of its receipts and disbursements for the past months,
as shown by its books. (Insert 6 or 12)

9. That the physical property is covered by insurance as follows:

Issuing company	Place of business	Kind	Amount
.....
.....
.....

10. That there is no litigation pending against applicant except as
herein fully explained.

11. That the total amount of capital stock issued and disposed of for
promotion purposes or for patents, good will, trademarks, copyrights,
processes or formulae is as follows:

Amount	For what issued	To whom issued	Address
\$.....
\$.....
\$.....

and that it agrees to issue no more stock for such items as are herein men-
tioned without first having submitted same for approval to the secretary of
state of the state of Iowa.

12. That attached hereto, marked Exhibit E, are true copies of all con-
tracts, bonds or other securities it desires to sell, or make with its contrib-
utors in Iowa, together with a true copy of its subscription blank, which
shall contain the amount of commissions paid, and terms under which
stock is to be sold and all other blanks used in connection therewith.

13. That permits to sell securities have been issued in the following
states:

State	Date of permit	Kind	Amount
.....
.....
.....

and that applications have been filed as follows:

State	Date filed	Denied or pending (explain fully)
.....
.....
.....

(Furnish copies of subscription blanks used in other states and statement of terms under which such securities are being or will be sold.)

14. That attached hereto, marked Exhibit F, is a true and complete copy of its by-laws and articles of incorporation.

15. That attached hereto, marked Exhibit H, is the written irrevocable consent for service of process as provided in Section 1920-u5, Chapter 13b, Supplemental Supplement to the Code of Iowa, as amended by the acts of the thirty-ninth General Assembly.

16. That attached hereto, marked Exhibit I, is a certified copy of the resolution passed by its board of directors, authorizing the execution of the blank designated as Exhibit H.

17. That attached hereto, marked Exhibit J, are true copies of all literature or advertising matter used or to be used by such company.

18. That attached hereto, marked Exhibit K, is a true and complete copy of each contract or agreement, made or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of in accordance with the laws of Iowa, and as provided in the contract or agreement attached, except as herein excepted.

Remarks:

19. That the following is a statement showing in detail the plan upon which the company is doing and intends to do business:

20. That the proceeds of this issue will be used for the purpose or purposes herein designated. (Make definite statements.)

21. That it has adopted the following plan for the sale of its stock. (Indicate whether to be sold through fiscal agents or agents appointed by this applicant):

The amount of promotion expense to be incurred in the sale of these securities will not exceed per cent.:

22. That the stocks, bonds or other securities offered for sale in the state of Iowa are not fraudulent, nor likely to work a fraud on the purchasers thereof.

23. That the following is a true statement in regard to its officers and directors:

NOTE.—Please give at least four references as to character, responsibility and financial standing of each officer and director. Eight references should be given as to the company. In each case one of the references should be a bank.

24. That its securities will be sold for the prices and on the terms herein indicated and will not be sold at any other price or any other terms without the consent of the secretary of state.

	Sale Price Per Share		Sale Price Per Share
Common Stock	\$.....	Bonds	\$.....
Preferred Stock	\$.....	Other Securities	\$.....
"No Par" Stock.....	\$.....	Other Securities	\$.....

Terms of sale:
.....
.....
.....

Wherefore, Your petitioner requests that authority be granted to sell:

No. shares	Class of security	Sale price per share	Amount
.....	Common,	\$.....	\$.....
.....	Preferred,	\$.....	\$.....
.....	"No Par" Stock,	\$.....	\$.....
.....	Bonds,	\$.....	\$.....
.....	Other securities,	\$.....	\$.....
		Total	\$.....

In accordance with the provisions of the above mentioned law, and in no case to exceed the amount stated in the permit issued by the secretary of state under this application. (See Exhibit L for complete information concerning bond issue.)

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this the day of, 192....

(Corporate Seal)
Name of Applicant.
By.....
Individual, Partner, President.
(Strike out words not applicable)
Attest:
Secretary.

State of, County of, ss.
..... { individual } and { individual }
 { partner } { partner } of the
 { president } { secretary }
(Strike out words not applicable)

Company of, being of lawful age, and being first duly sworn, depose... and say... that ...he... ha... each read the foregoing applica-

tion and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
Individual, Partner, President.
(Strike out words not applicable)

.....
Individual, Partner, Secretary.
(Strike out words not applicable)

Subscribed and sworn to before me this the
day of, 192....

(My commission expires)

Notary Public.

§ 379. Form—Appointment and Acceptance of Agent—Iowa.

Herewith is submitted statement of, giving residence,
(Agent)
qualification, occupation and business experience of said,
(Agent)
pursuant to and in compliance with section 8561, Code of Iowa, 1924, and
the undersigned being of the opinion that the said is of good
(Agent)
character, hereby appoints of to act
(Agent) (Give address of agent)
as (his or its) agent within the state of Iowa for the sale of
of (Kind of securities)
(Name of issuer)

Dated at this day of, A. D. 192...

.....
(Issuer or Owner)

(Corporate Seal)

By.....

State of Iowa, County of, ss.

I,, a notary public in and for the county and state aforesaid,
hereby certify that, residing at,
(President or secretary) (Address)
personally known to me to be the of said,
(Officer) (Company or corporation)
appeared before me this day in person, and subscribed the name of said
corporation to the foregoing appointment of agent, being thereunto duly
authorized, and acknowledged that he signed, sealed and delivered the
said instrument for and on behalf of the said,
(Company or corporation)

as its free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this day
of, A. D. 192...

(Notarial Seal)

Notary Public.

NOTE.—The appointment of agent should be properly executed by "Issuer,"
and dealer or broker, as the case may be. If a corporation, by President or Secretary with corporate seal attached.

I,, residing at, accept the afore-
 (Agent) (Address of Agent)
 said agency and agree to faithfully observe and comply with the require-
 ments and provisions of chapter 393, Code of Iowa, 1924, in and about the
 sale or offering for sale of in said state, and upon
 (Describe securities)
 my oath state that I will make no false or fraudulent statement or represen-
 tation in and about the sale or other disposition of the aforesaid securities
 and in my above appointment mentioned, and that I will make no state-
 ment or representation respecting the said securities or in connection
 with the sale or disposition thereof not within or supported as a fact by
 the statement qualifying said securities under chapter 393, Code of Iowa,
 1924.

Dated at this, the day of,
 A. D. 192..

.....
 Agent.

Subscribed and sworn to before me by the above this, the
 (Agent)

..... day of, A. D. 192...

(Notarial Seal)

.....
 Notary Public.

My commission expires

NOTE.—To this appointment of agent there must be attached a typewritten statement setting forth the address of such agent. Such statement, form 11, must show business qualifications, present and prior occupation or profession, for a period of ten years prior to date of such statement, together with the correct names and present addresses of each former employer of such agent and reason for resignation or discharge. (Section 8561.) This statement must be verified under oath in Iowa by such agent or representative.

§ 380. Form—Resolution Appointing Agent for Service of Process—Iowa.

Resolution by the of

....., 192...

At a meeting of the directors of of, duly held at the office of said company, on the day of, 192..., the following resolution was adopted:

Resolved, That the president and secretary of this be and they are hereby authorized and instructed to execute the written consent thereof to be sued in the state of Iowa, in the manner provided by section 1920-u5 of chapter 13B, Supplemental Supplement to the Code of Iowa and acts amendatory thereto.

State of, County of, ss.

I,, being duly sworn, on my oath, depose and say: That I am secretary of the of and that the foregoing is a true and correct copy of a resolution adopted by the board of directors of said

..... on the day of 192.., together with the minutes concerning said resolution.

Secretary.

Subscribed and sworn to before me, this day of 192...

Notary Public.

My commission expires 192...

§ 381. Form—Consent to Be Sued by Service of Process on Secretary of State—Iowa.

Know All Men by These Presents:

That the, a person, firm, association, company or corporation organized and doing business under and by virtue of the laws of the state of, with its principal office at, in said state, hereby consents, without power of revocation, that actions or process may be commenced against it, the said in the proper court of

(Applicant) (Strike out words not applicable)
any county in the state of Iowa in which cause of action against such person, firm, association, company or corporation may arise, or may have (Strike out words not applicable)

heretofore arisen growing out of the transaction of any business of said applicant in the state of Iowa, or in which plaintiff, or any of plaintiffs, if more than one, may reside, by service of process on the secretary of state of the state of Iowa; and the said applicant stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the person, firm, association, company or corporation direct.

(Strike out words not applicable)

In Witness Whereof, Said applicant has caused these presents to be executed as by law required and authenticated by its corporate seal at, in said state of, this day of, A. D. 192...

(Seal)

(Signature of Applicant)

If the applicant has no seal, so indicate.

Individual, Partner, President.
(Strike out words not applicable)

Individual, Partner, Secretary.
(Strike out words not applicable)

§ 382. Form—Statement to Bank Commissioner—Kansas.

To the Bank Commissioner of the State of Kansas:

.....	} No.
(Name of company)	
.....	
(Address)	

Makes the following statements in compliance with section 2, chapter 164, Session Laws of the State of Kansas, 1915, as amended by chapter 153 of the Laws of 1919, and act of 1923.

[1] The is a corporation, incorporated under the laws of the state of on the day of, 19...; its authorized capital stock is \$..... divided into shares of common and shares of preferred stock, with a par value of \$....., and that it has an authorized bond issue of \$.....

Attached hereto are certified copies of the charter and all existing by-laws of said corporation and marked respectively Exhibits "A" and "B."

[2] That the following is a true statement of its officers and directors and the names of all persons owning as much as ten per cent (10%) of its capital stock:

OFFICERS AND DIRECTORS.

NAME	ADDRESS	Number Shares and Bonds Owned			Actual Cash Invested in Company	Salary per Year	Estimate Net Worth	Time Devoted to Company
		Common	Preferred	Bonds				
President.....
Vice President
Secretary.....
Treasurer
General Manager
Trustees and Directors:								
1
2
3
4
5
6
7
8
9
10

Stockholders owning as much as 10% of stock each.

11.....	.....
12.....	.....
13.....	.....
14.....	.....
15.....	.....

[3] That the following is a full and correct statement of its capital stock, bonds and other securities on this date:

		Number of Shares	Par Value	Amount
Authorized Issue	Common Stock,	.....	.....	.....
	Preferred Stock,	.....	.....	.....
	"No Par" Stock,	.....	.....	.....
	Bonds,	.....	.....	.....
	Other Securities,	.....	.....	.....
				Total, \$.....
		Number of Shares	Par Value	Amount
Issued and Outstanding	Common Stock,	.....	.....	.....
	Preferred Stock,	.....	.....	.....
	"No Par" Stock,	.....	.....	.....
	Bonds,	.....	.....	.....
	Other Securities,	.....	.....	.....
				Total, \$.....

[4] That the following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.			
	No. Shares	*Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued and should correspond with value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.			
	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

"NO PAR" STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

OTHER SECURITIES.

(Designate kind.)

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

[5] Attached hereto, marked Exhibit "C," is a statement describing fully the real estate, plant, equipment, patents, good will, formulae, or intangible assets, received in exchange for stock.

NOTE.—The department will insist on a full statement touching each item mentioned in this paragraph. Failure to comply will surely bring adverse action from the board.

[6] That the following is a complete and correct statement of its assets and liabilities:

ASSETS.		
	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand
Cash in Banks
Other Assets as follows:
Total

LIABILITIES.		
	Amount	Write Nothing in This Column
Common Stock Outstanding...
Preferred Stock Outstanding...
Bonds Outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus
Other liabilities as follows:...
Total

[7] That attached hereto, marked Exhibit "D," is a true and correct trial balance sheet of its books on the date of the above statement.

[8] That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.		Profit.	
Carried to Surplus.....	.....	Undivided Profits, 192..	.....
Dividends, Common	.....	Gross earnings. (Specify	.....
Stock.....per cent..	.....	sources) .....	.....
Dividends, Preferred	.....		.....
Stock.....per cent..	.....		.....
Interest paid on bonds..	.....		.....
Interest borrowed money	.....		.....
Operating Expenses ....	.....		.....
Commissions .....	.....		.....
Salaries .....	.....		.....
Gain .....	.....	Loss .....	.....
Total .....	.....	Total .....	.....

[9] That attached hereto, marked Exhibit "E," is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

[10] Attached hereto is the consent of the Company to the commencement of actions against it and the service of process upon it in the state of Kansas by service of process on the secretary of state of the state of Kansas as required by section 3, chapter 164 of the Session Laws of 1915.

[11] Exhibit "F," hereto attached, is a true copy of the "security" which the said intends to sell in the state of Kansas, which said security will be sold for the following named price and on the following terms, and will not be sold, or offered for sale, in Kansas, at any other price or on any other terms, without the consent of the banking department:

[12] That the promotion expenses of the company will not exceed per cent of the capital stock. (There must also be included in this statement what arrangement, if any, has been made to absorb this expense.)

[13] That the following is the general plan upon which the company is doing and intends to do business and the purposes for which said securities are to be sold: (Make full statement.)

[14] That it has adopted the following plan for the sale of its stock:

[15] That attached hereto, marked Exhibit "G," is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this statement and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

[16] Accompanying this statement and made a part hereof by reference are copies of each public prospectus and all advertising matter used by the said and to be used in the state of Kansas.

[17] References:

NOTE.—Please give at least four references as to the character, responsibility and financial standing of each director. Also eight references as to the company itself.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this, the day of, 192...

(Seal)

(Company)

By.....

Attest:

President.

Secretary.

State of, County of, ss.

....., president, and, secretary, of the Company, of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me this, the day of, 192...

My commission expires

.....
Notary Public.

§ 383. Form—Appointment of Agent—Kansas.

Know All Men by These Presents:

That the, a corporation organized under the laws of the state of, and with its principal office at, in said state, hereby consents, without power of revocation, that actions may be commenced against it, the said, in the proper court of any county in the state of Kansas in which a cause of action against such corporation may arise, or may have heretofore arisen, or in which plaintiff may reside, by service of process on the secretary of state of the state of Kansas; and the said corporation stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or any other chief officer of said corporation.

In Witness Whereof, Said corporation has caused these presents to be executed by its president and its secretary, and authenticated by its corporate seal, at in said state of, this day of, A. D. 192...

Attest:
Secretary.

.....
President.

§ 384. Form—Resolution Appointing Secretary of State as Agent—Kansas.

Resolution by the of

....., 192...

At a meeting of the directors of duly held at the office of said company, on the day of, 192., Mr. offered the following resolution and moved its adoption:

Resolved, That the president and secretary of this be and they are hereby authorized and instructed to execute the written consent thereof to be sued in the state of Kansas, in the manner provided in section 3, chapter 164, Session Laws of the state of Kansas, 1915.

The resolution was adopted.

State of, County of, ss.

....., being duly sworn, says he is secretary of the of and that the foregoing is a true and correct copy of a resolution adopted by the board of directors of said on the day of, 192., together with the minutes concerning said resolution.

.....
Secretary.

Sworn to and subscribed before me, this day of, 192...

.....
Notary Public,

My commission expires 192...

Applicant will be notified when to appear for hearing.
Date of application Filing fee \$.....

.....Company }
 (Name) }
 } No.
 (Address) (Street) (City)

- | | Authorized | Issued | Unissued |
|------------------|------------|-----------|-----------|
| Common Stock, | \$..... | \$..... | \$..... |
| Preferred Stock, | \$..... | \$..... | \$..... |
| Non-Par Stock, |Shs. |Shs. |Shs. |
| Bonds, | \$..... | \$..... | \$..... |
| Notes, | \$..... | \$..... | \$..... |

This statement not to reflect any new financing.

36—Corporate Management

ASSETS—Continued.		LIABILITIES—Continued.	
	Amount		Amount
Patents		Reserves (name them).....	
Good Will		Surplus:	
Patterns and Drawings.....		Undivided Profits	
Other Assets (be specific)....		Book Increases in Values..	
.....		Other Surplus Items.....	
Total.....	\$.....	Total.....	\$.....

(Total of assets and liabilities must balance.)

(Application must show date upon which financial statement is taken from the books.)

Financial statement must be shown on above form and not referred to in certain exhibit.

4. Statement showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.			
	No. Shares	†Actual Value	Remarks
Actual Cash			
Notes.....			
Real Estate			
Plant.....			
Equipment			
Patents.....			
Organizing.....			
Promotion			
Commissions.....			
Salaries.....			
Dividends.....			
Totals.....			

PREFERRED STOCK.			
	No. Shares	†Actual Value	Remarks
Actual Cash			
Notes.....			
Real Estate			
Plant.....			
Equipment			
Patents.....			
Organizing.....			
Promotion			
Commissions.....			
Salaries.....			
Dividends.....			
Totals.....			

NON-PAR STOCK.			
	No. Shares	†Actual Value	Remarks
Actual Cash			
Notes.....			
Real Estate			
Plant.....			
Equipment			
Patents.....			
Organizing.....			
Promotion			

NON-PAR STOCK—Continued.

	No. Shares	†Actual Value	Remarks
Commissions.....			
Salaries.....			
Dividends.....			
Totals.....			

†This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock and bonds issued, and should correspond with the value at which these different items were given in to the company and carried on the books.

5. Statement of earnings for five years after depreciation, interest and federal taxes.

	19....	19....	19....	19....	19....
Gross,	\$.....	\$.....	\$.....	\$.....	\$.....
Net,	\$.....	\$.....	\$.....	\$.....	\$.....

6. Statement of dividends (as above):

	19....	19....	19....	19....	19....
Amount cash, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Amount stock, \$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Rate,	%	%	%	%	%

7. Real estate, plant and equipment: Give detailed description and location; give valuation as carried on books, also assessed valuation. In all cases where real estate is the principal asset of the company, or where there is a bond issue secured by a mortgage upon real estate a certified copy of conveyance to company must be attached to application, together with a certificate of an attorney that the examination of the title shows the same to be good and in the company.

8. Assessed valuation of real estate \$.....

9. Value of real estate as carried on books \$.....

A. Is the real estate held by corporation in fee?

B. What incumbrance against it?

10. Is the physical property covered by insurance?

If so, give the amount of policies:

11. Patents: (Give description and attach copy of all patents and copy of assignment of patents to company.)

12. What is the nature of the business now being or to be conducted?

Give detailed plans of operation:

13. For what purpose are unissued securities to be sold?

.....

(Attach copies of stock certificates and bonds)

14. At what price and under what plan are such securities to be sold? (Give here exactly what amount of securities you desire to sell in Michigan.)

	Amount	Par value	Price per share
Preferred, \$.....	\$.....	\$.....	\$.....
Common, \$.....	\$.....	\$.....	\$.....
No Par, Number shares.....			\$.....

15. By whom are securities to be sold?

What commission to be paid?%

16. Does the corporation understand that all commissions paid on the sale of stock must conform to the following regulations?

Where the payments for the security run over a period not to exceed six (6) months with at least thirty per cent (30%) down payment, said commission shall be paid at the rate of fifty per cent (50%) out of the down payment, and the balance of fifty per cent (50%) over the three payments subsequent to the first payment. Where the down payment is fifty per cent (50%) or over, the entire commission to come out of the down payment. Where the down payment is less than thirty per cent (30%) the commission to be paid shall be that percentage of its total as the down payment bears to fifty per cent (50%) of the entire purchase price.

File copy of sales contract conforming to the above.

17. Is the stock to be sold for cash or on partial payment plan?

Does the corporation understand that if the stock is sold on partial payment plan that the stock subscription blank must contain the following information?

The amount of authorized capital stock; the amount paid for in cash or property at the time the security has been accepted for filing; the amount taken for patents and promotion; the facts as to any escrowed stock, if there be any escrowed either by this commission or otherwise; the amount of commission which is to be paid for the sale of the stock by the company or underwriter; and any other fact or facts concerning the company which this commission may deem pertinent, said statement to be approved by the securities commission before it can be used.

File copy of stock subscription blank.

18. Is there a bond issue outstanding?

If so, by whom trustee?

Date of bonds

Maturity date

If bonds are optional state at what price and provisions for calling

19. (a) If application has been made to securities commission, or other officials having jurisdiction over sale of securities in other state or states, tell where, when and the disposition of such application

20. Have the company's books been audited? If so, by whom and when was audit made?

(Attach copy of audit hereto)

21. Attach hereto a complete list of all stockholders, showing number of shares of stock or bonds held by each, value of same, and actual consideration which was given for same in each instance.

22. Sample copy of all literature or advertising matter must be attached. This means advertisements of securities and not advertisements of company's products unless same is to be used in sale of securities.

23. Additional requirements are as follows:

1. Attach copy of articles of incorporation or charter, which must be certified to by the secretary of state of the state under whose laws the company is incorporated.

2. If not organized under the laws of the state of Michigan, attach copy of law under which company was organized.

3. Attach copy of constitution and by-laws.

4. Attach any amendment to any of the foregoing.

5. Attach copy of mortgage or lease.

6. All foreign companies must file consent that suits and actions may be commenced against it by service on the chairman of Michigan Securities Commission (Sec. 19, Act 220, P. A. 1923). Blank forms are supplied by the commission.

7. Filing fee must be computed at the rate of one-tenth of one per cent on face value of unissued securities, minimum fee \$10, maximum fee \$250 where amount of securities to be sold does not exceed one million dollars; \$300 thereafter. No application will be filed or considered until the fee is paid.

8. Attach at least four letters of references as to the character, responsibility and financial standing of each officer. Also references as to the company itself. Business address of all references must be given.

9. Do not fasten the sheets of this application together with a permanent staple or fastener.

Do not fasten documents to body of application but number same as "Exhibits" and enclose with application.

24. The following is a list of the officers of the company:

NAME	ADDRESS	Salary per year
President.....
Vice-President.....
Secretary.....
Treasurer.....
General Manager.....
Directors:		
1.
2.
3.
4.
5.
6.
7.
8.

Wherefore, In view of the showing herein made, the Company of does respectfully pray that its securities be accepted for filing in accordance with the provisions of the above mentioned law.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this day of, 19....

.....
Company.

By.....
President.

(Seal)

Attest:
Secretary.

State of, County of, ss.

....., president, and, secretary, of the Company of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me this the
day of, 19....

.....
Notary Public.

My commission expires
(See that corporate seal is affixed)

§ 386. Form—Resolution Authorizing Appointment of Agent—Michigan.

On motion, the following resolution was duly made, passed and adopted:

Whereas, This corporation proposes to make application to the Michigan Securities Commission for permission to sell securities within the state of Michigan, in accordance with the provisions of Act No. 220 of the Public Acts of Michigan of 1923.

Whereas, This corporation is organized under the laws of the state of; and

Whereas, It is therefore necessary to file with said application the consent of this corporation that suits and actions arising out of or founded upon the sale of its securities may be commenced against it in the proper court of any county in said state of Michigan in which a cause of action may arise against or in which the plaintiff in said action may reside, by the service of any process or pleadings authorized by the laws of said state of Michigan on the chairman of the Michigan Securities Commission and that such consent be irrevocable:

Be It Therefore Resolved:

That the president and secretary of this corporation be hereby authorized and directed for and in behalf of said corporation to execute and file with the Michigan Securities Commission, in the form prescribed by said commission, the irrevocable consent of this corporation that suits and actions arising out of or founded upon the sale of its securities filed under said Act 220, may be commenced against it in the proper court of any county, in said state of Michigan, in which a cause of action may arise or in which the plaintiff in said action may arise, by the service of any process or pleadings authorized by the laws of the said state of Michigan on the chairman of the Michigan Securities Commission and that such service of such process or pleadings on such chairman shall be taken and held in

all courts to be as valid and binding as if due service had been made upon such corporation itself.

I,, secretary of Company, hereby certify that the foregoing is a true and exact copy of a resolution of the board of directors of the Company, which resolution was duly made, passed and adopted at a legal meeting of said board, held on the day of, A. D. 19..., and that the passage of said resolution was in all respects regular and according to the by-laws of said corporation.

In Testimony Whereof, I have hereunto set my hand and the seal of said corporation this day of, A. D. 19....

(Seal)

.....
Secretary.

§ 387. Form—Consent to Appointment of Agent for Service of Process—Michigan.

MICHIGAN SECURITIES COMMISSION

Consent under Section 19, Act 220, Public Acts 1923

Know All Men by These Presents:

That the of, a corporation, incorporated and doing business under and by virtue of the laws of the state of and for the purpose of complying with the provisions of Section 19, of Act No. 220, Public Acts of 1923, of the state of Michigan, does hereby and herein make and give its consent that suits and actions arising out of or founded upon the sale of its securities filed under said Act 220, may be commenced against it in the proper court of any county in said state of Michigan in which a cause of action may arise against it or in which the plaintiff in said action may reside by the service of any process or pleadings authorized by the laws of said state of Michigan on the chairman of the Michigan Securities Commission of said state of Michigan. It is hereby stipulated and agreed on the part of said corporation that such service of such process or pleadings on such chairman shall be taken and held in all courts to be as valid and binding as if due service had been made upon such corporation itself.

The consent herein given shall be deemed to be and is irrevocable.

In Witness Whereof, The said corporation has hereunto affixed its seal and signature in accordance with the resolution of the board of directors thereof authorizing the same.

..... (L. S.)
By..... (L. S.)
President.

(Seal)

By..... (L. S.)
Secretary.

State of County of, ss.
On this day of, A. D. 19...., personally appeared before me, a notary public in and for said county and state, and, who are both known to me to be the persons whose signatures are attached to the foregoing instrument and who each acknowledge the same to be his act and deed, and the act and deed of the corporation for which each said person purports to act.

.....
Notary Public.

My commission expires
(Attach hereto duly certified copy of the resolution of the board of directors authorizing the above.)

§ 388. Form — Application for Registration of Securities — Minnesota.

STATE OF MINNESOTA
SECURITIES DIVISION, DEPARTMENT OF COMMERCE
To the Commerce Commission of the State of Minnesota,
St. Paul, Minnesota.

The undersigned,—the issuer of the securities covered by this application—a licensed broker—(strike out words not applicable), in compliance with the provisions of Chap. 192, G. L. of Minn. 1925, as amended by Chap. 426, G. L. of Minn. 1925, hereby makes application for the registration of the following securities for the applicant and the following licensed brokers:

Number of Securities	Name of Securities	Issuer	Proposed Sale Price
.....
.....
.....

In support of such application and in conformity with said law applicant represents as follows:

1. That the issuer is—a corporation duly organized, created and existing under and by virtue of the laws of the state of—a partnership—an association—an individual—or (Strike out words not applicable.)
2. That the issuer's business address is
3. That the following is a true and correct list of all promoters, officers and directors of the issuer (if a corporation), or of all promoters, partners and members (if a partnership or association), showing their names, positions, legal residences, stock ownership and salaries:

Name	Position	Legal Residence	Number of Shares Owned		Salary	Time Devoted
		(State, City and Street)	Common	Pre-ferred	Per Year	
.....
.....
.....

4. That the following is a true and correct statement of the consideration received for the securities listed in the statement set out in paragraph No. 6 hereof as issued and outstanding and as subscribed but unissued:

COMMON STOCK.			PREFERRED STOCK.		
		No. Shares			No. Shares
Actual Cash	Actual Cash ...		.....
Notes.....		Notes.....		.....
Real Estate	Real Estate ...		.....
Plant.....		Plant.....		.....
Equipment.....		Equipment.....		.....
Patents.....		Patents.....		.....
Organizing.....		Organizing.....		.....
Promotion.....		Promotion.....		.....
Commissions...		Commissions...		.....
Salaries.....		Salaries.....		.....
Dividends.....		Dividends.....		.....
Total.....		Total.....		.....

Name of Securities.....		No. Shares	Name of Securities.....		No. Shares
Actual Cash	Actual Cash ...		.....
Notes.....		Notes.....		.....
Real Estate	Real Estate ...		.....
Plant.....		Plant.....		.....
Equipment.....		Equipment.....		.....
Patents.....		Patents.....		.....
Organizing.....		Organizing.....		.....
Promotion.....		Promotion.....		.....
Commissions...		Commissions...		.....
Salaries.....		Salaries.....		.....
Dividends.....		Dividends.....		.....
Total.....		Total.....		.....

5. That the following is a statement describing the nature of the issuer's present business and its future plans:

6. That the following is a true and correct statement of assets and liabilities of the issuer as of (Must be most recent one available.)
(Insert date)

ASSETS.		LIABILITIES.	
	Amount		Amount
Cash on Hand.....	\$.....	Accounts Payable:	
Cash in Bank.....	For Merchandise	\$.....
Notes Receivable:		To Others .....	.....
Customers'	Notes Payable:	
Officers'	For Merchandise .....	.....
Others	To Banks .....	.....
Accounts Receivable:		To Others .....	.....
Customers'	Mortgages .....	.....
Officers'	Reserves:	
Others	For Taxes .....	.....
Real Estate	For Depreciation .....	.....
Buildings	Surplus:	
Machinery	Earned .....	.....
Equipment	Unearned .....	.....
Inventories	Common Stock Outstanding..	.....
Stock Subscriptions Unpaid..	Common Stock Subscribed	
Patents	but Unissued .....	.....

ASSETS—Continued.		LIABILITIES—Continued.	
	Amount		Amount
Good Will	Preferred Stock Outstanding .....	.....
Deferred Charges	Preferred Stock Subscribed .....	.....
.....	but Unissued .....	.....
Total.....	\$.....	Total.....	\$.....

7. That Exhibit "E" filed herewith and made a part hereof is a true and correct detailed profit and loss statement of the issuer for the last fiscal year ended prior to the date of this application, or if the issuer has not been in business for a full year, then for the entire time issuer has been in business.

8. That the following is a true and correct statement of the earnings of the issuer for the two fiscal years immediately prior to the fiscal year for which profit and loss statement has been set out in No. 7 above:

Fiscal year ends, 192...	
192...	192...
Gross, \$.....	\$.....
Net, \$.....	\$.....

9. That the following is information regarding the securities and the plan of selling same:

- (a) Are the securities issued or unissued?
- (b) If issued, the owner is

(c) That the following is a statement of the proposed plan of selling the securities, the salesmen's commissions and other expenses to be incurred in such sale, whether the securities will be sold on the installment plan, and if so, the terms thereof, and if two classes are to be sold, whether sales will be made in combination:

(d) If applicant is a broker, state the terms of the contract or arrangement with the issuer or owner showing the commissions or compensation to be received by the applicant, etc. (If contract is in writing copy thereof should be attached in answer to paragraph No. 20 hereof.)

10. That (where securities to be sold are unissued) the proceeds from the sale thereof will be used by the issuer for the following purposes:

11. That no application has been made in any other state for the licensing or approval of any securities of the same issuer, except as follows: (Give the dates of applications and the status.)

12. That Exhibit "A" filed herewith and made a part hereof is a copy of the articles of incorporation and all amendments thereto of the issuer (if a corporation), all duly certified to by the secretary of state of the state of incorporation, or (if a partnership, association, trust or other organization), a copy of all of the organization papers, duly certified to by one of the members as being true and correct copies thereof.

13. That Exhibit "B" filed herewith and made a part hereof is a copy of the by-laws of the issuer duly certified to by the secretary as being a true and correct copy of the by-laws as now in force.

14. That Exhibit "C" filed herewith and made a part hereof is a resolution of applicant's board of directors authorizing the appointment of the commissioner of securities as its attorney for the service of process. (Required only on applications by issuers which are foreign corporations.)

15. That Exhibit "D" filed herewith and made a part hereof is an appointment by the applicant of the commissioner of securities as the attorney of the applicant or applicants for the service of process. (Required on all applications by issuers which are foreign corporations or non-resident individuals, and of each non-resident member of a partnership, association, etc.)

16. That Exhibit "F" filed herewith and made a part hereof is a statement fully describing the real estate, plant, equipment, patents, and other assets as set out in the financial statement in No. 6 hereof. (Each item should be so described and explained that the commission will be able to understand its nature and approximate value.)

17. That Exhibit "G" filed herewith and made a part hereof is a true and correct copy of the last audit of the issuer's books.

18. That Exhibit "H" filed herewith and made a part hereof is a true and correct copy of the securities covered by this application.

19. That Exhibit "I" filed herewith and made a part hereof is a true and correct copy of the subscription blank or contract to be used in the sale of the securities covered by this application.

20. That Exhibit "J" filed herewith and made a part hereof are true and correct copies of all contracts made for the sale of the securities covered by this application; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which anyone has received or is to receive any cash, securities or other compensation, for the sale of such securities, except as specified in this application and the several exhibits hereto attached.

21. That Exhibit "K" filed herewith and made a part hereof are duplicate copies of prospectuses, circulars or other advertising matter, to be used in the sale of the securities covered by this application.

22. That Exhibit "L" filed herewith and made a part hereof is a list of three references as to the financial standing and business reputation of each officer and director of the issuer (if a corporation), or of all partners and members (if a partnership or association).

23. That Exhibit "M" filed herewith and made a part hereof is a schedule of all notes given by the officers and directors of the issuer (if a corporation), or by all partners or members (if a partnership or association), for securities issued or to be issued, showing the dates, amounts, due dates, rate of interest, and other conditions thereof.

24. That Exhibit "N" filed herewith and made a part hereof is a statement of the business or employment during the last five years of each officer and director (if a corporation), or of each partner or member (if a partnership or association).

25. That Exhibit "O" filed herewith is an attorney's opinion on the title to all real estate owned or leased by the issuer.

26. That Exhibit "P" filed herewith and made a part hereof is

27. That Exhibit "Q" filed herewith and made a part hereof is

Wherefore, Applicant prays that such securities be duly registered for such applicant and the above named licensed brokers, in accordance with the provisions of Chap. 192, G. L. of Minn. 1925.

(Corporate Seal)

By.....

(President, Secretary, Partner or Member)

(Corporate Verification)

State of, County of, ss.

On this day of, 192..., personally appeared before me, a notary public in and for said county and state,, who being first duly sworn, deposes and says that he is—president—secretary—of, the corporation described in the foregoing application; that he has read said application and knows the contents thereof and that the facts therein stated are true; that the seal affixed to said application is the corporate seal of said corporation and that said application was executed in behalf of said corporation by authority of its board of directors; and that said application is the free act and deed of said corporation.

Subscribed and sworn to before me this day of, 192....

(Notarial Seal)

Notary Public, County

My commission expires

(Individual Verification)

State of, County of, ss.

On this day of, 192..., personally appeared before me, a notary public in and for said county and state,, who being first duly sworn, deposes and says that he is of, described in the foregoing application; that he has read said application and knows the contents thereof and that the facts therein stated are true; that he has full authority to execute said application; and that said application is the free act and deed of said applicant.

Subscribed and sworn to before me this day of, 192....

(Notarial Seal) Notary Public, County
My commission expires

§ 389. Form — Notification of Intention to Sell Securities — Minnesota.

STATE OF MINNESOTA

SECURITIES DIVISION, DEPARTMENT OF COMMERCE

To the Commissioner of Securities of the State of Minnesota, St. Paul, Minnesota.

The undersigned,, the issuer of the securities covered by this notification—a licensed broker—(strike out words not applicable), in compliance with the provisions of chapter 192, G. L. of Minn. 1925, as amended by chapter 426, G. L. of Minn. 1925, hereby notifies the commissioner of securities of the state of Minnesota of its intention to sell the following securities in the state of Minnesota: and represents as follows:

- (a) That the issuer of said securities is
- (b) That the total amount of the issue is \$..... and that the amount covered by this notification is \$.....
- (c) That the securities fall within subsection, subdivision of section 6 of said chapter 192, G. L. of Minn. 1925.
- (d) That Exhibit "A" attached hereto and made a part of this notification is a descriptive circular or statement describing the securities covered by this notification and that all amounts in said exhibit given as assets, values and past net earnings and all other matters therein contained tending to show the existence of the statutory prerequisites for registration by notification are true and correct and that all amounts therein given as estimated future net earnings are conservative and well justified.
- (e) That the price at which such securities are to be sold in the state of Minnesota is \$.....

(f) That this notification is given on behalf of the undersigned and

By.....
President—Secretary.

Exhibit "A" must contain full detailed and definite statements of all facts necessary to show that the securities are entitled to registration by notification under section 6.

(Corporate Seal)

State of, County of, ss.

....., being first duly sworn, deposes and says that he is of the issuer—license broker—(strike out words not applicable) giving the foregoing notice; that he has full authority to sign said notification, that he has read said notification and knows the contents thereof, that the facts therein stated are true and that, except as to matters stated on information and belief, deponent knows them to be true.

Subscribed and sworn to before me this day of, 192...

(Notarial Seal) Notary Public County,
My commission expires

§ 390. Form—Corporate Appointment of Attorney for Service of Process—Minnesota.

STATE OF MINNESOTA

SECURITIES DIVISION, DEPARTMENT OF COMMERCE

St. Paul, Minnesota

Know All Men by These Presents:

That in compliance with the provisions of chapter 192, General Laws of Minnesota for 1925, as amended by chapter 426, General Laws of Minnesota for 1925, the undersigned, a corporation duly organized, created and existing under and by virtue of the laws of the state of, does hereby appoint the commissioner of securities of the state of Minnesota, or his successor in office, its attorney within the state of Minnesota upon whom any process authorized by the laws of the state of Minnesota may be served in any action or proceeding commenced in the proper court of any county in the state of Minnesota against such corporation or in which such corporation may be a party in relation to or involving any transaction covered by said chapter 192, General Laws of Minnesota for 1925, and does hereby expressly consent and agree that service on said attorney shall be as valid and binding as if due and per-

senal service had been made on such corporation, and that such appointment shall be and is irrevocable.

In Witness Whereof, Said corporation has caused this instrument to be executed by its president and secretary and its corporate seal to be affixed this day of 192...

(Corporate Seal)

By.....

President.

And

Secretary.

State of, County of, ss.

On this day of, 192..., before me, a notary public in and for said county and state, personally appeared and, to me known to be the persons who executed the foregoing instrument, who, being by me duly sworn, did say that they are the president and secretary, respectively, of, the corporation described in the foregoing instrument, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was executed in behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal)

Notary Public, County,

My commission expires

§ 391. Form — Resolution Authorizing Appointment of Attorney—Minnesota.

On motion, the following resolution was duly made, passed and adopted:

Whereas, This corporation proposes to make application for permission to sell securities within the state of Minnesota in accordance with chapter 192, G. L. of Minn. 1925, and

Whereas, This corporation is organized under the laws of the state of, and

Whereas, It is therefore necessary to file with said application the appointment of the commissioner of securities of the state of Minnesota, or his successor in office, as its attorney upon whom process may be served in any action or proceeding against this corporation or in which this corporation may be a party in relation to or involving any transaction covered by chapter 192, G. L. of Minn. 1925, on which attorney service shall be as valid and binding as if due and personal service had been made upon this corporation, and that such appointment shall be irrevocable; now, therefore,

Be It Resolved, That the president and secretary of this corporation be and they are hereby authorized and directed, for and on behalf of this corporation, to execute and file with the commissioner of securities of the

state of Minnesota in the form prescribed by said commissioner of securities, the appointment of said commissioner of securities as its attorney, upon whom process may be served in any action or proceeding against this corporation or in which this corporation may be a party in relation to or involving any transaction covered by chapter 192, G. L. of Minn. 1925, on which attorney service shall be as valid and binding as if due and personal service had been made upon this corporation, and that such appointment shall be irrevocable.

I,, secretary of, hereby certify that the foregoing is a true and exact copy of a resolution of the board of directors of the, which resolution was duly made, passed and adopted at a legal meeting of said board of directors held on the day of, 192..., and that the passage of said resolution was in all respects regular and in accordance with the by-laws of said corporation.

In Witness Whereof, I have hereunto set my hand and the seal of said corporation, this day of, 192...

(Corporate Seal)

Secretary.

§ 392. Form—Application for Broker's License—Minnesota.

STATE OF MINNESOTA

SECURITIES DIVISION, DEPARTMENT OF COMMERCE

To the Commerce Commission of the State of Minnesota, St. Paul, Minn.

The undersigned,, in compliance with the provisions of chapter 192, G. L. of Minn. 1925, as amended by chapter 426, G. L. of Minn. 1925, hereby makes application for a broker's license and herewith remits the statutory fee of \$50 and in support of such application represents as follows:

1. That applicant is—a corporation organized under the laws of the state of — a partnership, — an association, — an individual, or — (Strike out words not applicable.)

2. That applicant's business address is
(Give state, city and street)

3. That the name and legal residence of applicant (if an individual), of each officer and director (if a corporation), of each partner or member (if a partnership or association), are as follows:

NAME	OFFICIAL CAPACITY	LEGAL RESIDENCE (State, City and Street)
.....
.....
.....

4. That the following is a true and correct financial statement of the applicant as of, 192...

(Insert date)

ASSETS.		LIABILITIES.	
Cash on Hand.....	\$.....	Common Stock Outstanding..	\$.....
Cash in Bank.....	.....	Preferred Stock Outstanding.	.....
Accounts Receivable .....	.....	Accounts Payable .....	.....
Notes Receivable .....	.....	Notes Payable .....	.....
.....
.....
Total .....	.....	Total .....	.....

5. That applicant's business in this state will be in charge of:

Name	Address
.....

6. That the general character of the securities to be offered and sold in Minnesota and the business to be transacted is as follows:

7. That applicant has made similar application in the following states (state whether such application has been granted or refused, and if licensed, whether such license has ever been revoked or suspended):

8. That attached hereto marked Exhibit "A" and made a part hereof is a statement of the business or employment during the last five years of each officer and director (if a corporation), of each partner or member (if a partnership or association) or of the individual applicant:

9. That the following is a list of three references as to the financial standing and business reputation of each officer and director (if a corporation), of each partner or member (if a partnership or association) or of the individual applicant:

10. That Exhibit "B" filed herewith and made a part hereof is a resolution of applicant's board of directors authorizing the appointment of the commissioner of securities as its attorney for the service of process. (Required only of foreign corporations.)

11. That Exhibit "C" filed herewith and made a part hereof is an appointment of the commissioner of securities as the attorney of the applicant or applicants for the service of process. (Required only of foreign corporations and non-resident individuals and of each non-resident member of a partnership, association, etc.)

Wherefore, Applicant prays that it be licensed as a broker under chapter 192, G. L. of Minn. 1925.

(Corporate Seal)

By.....

President, Secretary, Partner, or Member.

State of, County of, ss.

....., being first duly sworn, deposes and says that he is of the applicant above named; that he has full authority to sign said application; that he has read said application and knows the contents thereof; and that the facts therein stated are true.

Subscribed and sworn to before me this day of, 192...

(Notarial Seal)

Notary Public, County,

My commission expires

37—Corporate Management

§ 393. Form—Application for Sale of Securities—Nebraska.

Before the Department of Trade and Commerce of the State of Nebraska.

In the matter of the application of

.....
(Name)
.....
(Address)

} No.
(General)

for authority to sell its securities in Nebraska under the provision of the law of 1921, chapter 308, as amended.

The Company of represents to the department of trade and commerce:

1st. That its principal office is located at, and that it has branch offices at

2d. That it was incorporated on the day of, 192..., under the laws of the state of, with an authorized capital stock of \$....., divided into shares of common and shares of preferred stock, with a par value of \$..... each; and that it has an authorized bond issue of \$.....

3d. That the following is a full and correct statement of its capital stock and securities on this date:

		Number of Shares	Par Value	Amount
Authorized Issue	Common Stock,	.....	.....	.....
	Preferred Stock,	.....	.....	.....
	"No Par" Stock,	.....	.....	.....
	Bonds,	.....	.....	.....
	Other Securities,	.....	.....	.....
Total, \$.....				

		Number of Shares	Par Value	Amount
Issued and Outstanding	Common Stock,	.....	.....	.....
	Preferred Stock,	.....	.....	.....
	"No Par" Stock,	.....	.....	.....
	Bonds,	.....	.....	.....
	Other Securities,	.....	.....	.....
Total, \$.....				

4th. The following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.			
	No. Shares	*Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion

COMMON STOCK—Continued.

	No. Shares	*Actual Value	Remarks
Commissions
Salaries
Dividends
Totals

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with the value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

"NO PAR" STOCK

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant
Equipment
Patents
Organizing
Promotion
Commissions
Salaries
Dividends
Totals

5th. Attached hereto, marked Exhibit A, is a statement giving a true and complete list of the holders of the securities of this company, indicating the consideration which was given for same.

6th. Attached hereto, marked Exhibit B, is a statement describing fully the real estate, plant, equipment, patents, etc., received in exchange for stock.

7th. That the following is a complete and correct statement of its assets and liabilities.

ASSETS.		
	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand.....
Cash in Banks.....
Other assets, viz.....
Totals.....

LIABILITIES.		
	Amount	Write Nothing in This Column
Common Stock Outstanding..
Preferred Stock Outstanding..
Bonds Outstanding
Mortgages.....
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus.....
Other Liabilities, viz.....
Totals.....

8th. That attached hereto, marked Exhibit C, is a true and correct trial balance sheet of its books on the date of the above statement.

9th. That the following is a true statement of its profit and loss account for the months prior to this date.
(6 or 12)

Loss.		Profit.	
Carried to Surplus.....	.....	Undivided Profits, 192..	.....
Dividends, Common		Gross earnings. (Specify	
Stock.....per cent..	.....	sources) .....	.....
Dividends, Preferred			
Stock.....per cent..	.....	.....	.....
Interest paid on bonds..	.....	.....	.....
Interest borrowed money	.....	.....	.....
Operating Expense .....	.....	.....	.....
Commissions.....	.....	.....	.....
Salaries.....	.....	.....	.....
Gain .....	.....	Loss .....	.....
Total.....	.....	Total.....	.....

10th. That attached hereto, marked Exhibit D, is a true and complete statement of its receipts and disbursements for the past months, as shown by its books.
(6 or 12)

11th. That the following is the general plan upon which the company is doing business, and the purpose for which said securities are to be sold.

12th. That it has adopted the following plan for the sale of its stock.

13th. That attached hereto, marked Exhibit E, is a blank certificate of its stock or other securities it desires to sell, together with a true copy of its subscription blanks and other blanks used in connection therewith.

14th. That attached hereto, marked Exhibit F, is a true and complete copy of its constitution and by-laws or articles of copartnership.

15th. That attached hereto, marked Exhibit G, is a true and complete copy of its charter, further certified to as being a true copy by the recording officer of the state under which it is incorporated. (Required if not incorporated in Nebraska.)

16th. That attached hereto, marked Exhibit H, is the written, irrevocable consent for service of process, as provided for in section 8126, Comp. Stats. 1922.

17th. Attached hereto and marked Exhibit I, is a certified copy of the resolution passed by its board of directors, authorizing the execution of the document designated as Exhibit H.

18th. That attached hereto and marked Exhibit J, is a certified copy of the laws under which the company was organized. (Required only if not incorporated in Nebraska.)

19th. That the following is a true statement regarding its officers and directors:

20th. That its securities will be sold for the following named prices and on the following terms, and will not be sold at any other price or on any other terms without the consent of the Nebraska state railway commission:

21st. That attached hereto, marked Exhibit K, is a true and complete copy of every contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for promotion, or for any other cause except as specified in this application and its several exhibits attached, and that all stock securities of this company will be sold or disposed of for cash or for its equivalent, as provided in the contracts or agreements attached, except as herein stated.

Remarks:

Wherefore, your petitioner, upon the showing herein made, does respectfully pray that authority be granted it to sell its securities as follows: \$..... common stock, \$..... preferred stock, \$..... bonds, and \$..... other securities, in accordance with the provisions of the above mentioned law.

NOTE.—Please give at least four references as to the character, responsibility and financial standing of each director. Also eight references as to the company itself.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this, the day of, 19....

.....

Company.

(Seal)

By.....

President.

Attest:

Secretary.

State of, County of, ss.

....., president, and, secretary of the Company of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....

President.

.....

Secretary.

Subscribed and sworn to before me this day of, 19....

.....

Notary Public.

My commission expires

§ 394. Form — Dealer’s Application for Registration — New Hampshire.

To the Insurance Commissioner:

The undersigned,
(Name)

a, hereby applies for
(State whether corporation, partnership or individual)
registration as a dealer under Chapter 202, Laws of 1917, entitled “An act
to protect the public against the sale of worthless securities” and makes
the following statement of fact:

- 1. Principal place of business
- 2. Name or style of doing business
- 3. Dealer’s address
- 4. How long have you been a dealer in securities?
- 5. Give the names, residences, business addresses, capacity and title of
all persons interested in the business as principals, officers, directors or
managing agents.

Name	Residence	Business Address	Capacity and Title
.....
.....
.....

- 6. In what other states have you ever applied for license?
- 7. In what other states licensed or registered?
- 8. The following are suggested as three references as to applicant’s busi-
ness repute and the business repute of applicant’s officers, directors and
agents (if there are any).

Name	Address
.....
.....
.....

9. State briefly the general plan and character of the business of appli-
cant, specifying the nature of property in which it is proposed to deal, and
method of transacting business, whether by personal solicitation, adver-
tisement, correspondence or otherwise, whether as principal or broker.

There are attached hereto and made a part hereof—

- (a) Copy of charter or articles of incorporation certified by the
proper state official.
- (b) Copy of regulations and by-laws.
- (c) Certified copy of articles of copartnership, or of association.
(Strike out papers not enclosed)
- (d) Power of attorney appointing the insurance commissioner agent
for service of process if applicant is a non-resident.

There is enclosed herewith twenty-five dollars, being the fee due on
filing this application.

(Sign here)

(Corporate Seal if Incorporated)

If applicant is a corporation, or association, the name **must be signed** by the officers duly authorized to execute papers on behalf thereof. If applicant be a copartnership, the names and addresses of all partners **must be signed**.

POWER OF ATTORNEY

Know All Men by These Presents, That the undersigned,
(Name)

a, being an applicant for registration as a dealer in securities under the provisions of Chapter 202, Laws of 1917, entitled "An Act to Protect the Public Against the Sale of Worthless Securities," does hereby appoint the insurance commissioner of the state of New Hampshire for the time being agent for the service of legal process upon the dealer in any action in the courts of this state based upon or arising in connection with any sale of, attempt to sell, or advertising of securities in this state, the sale of which is regulated by said act, or based upon or arising in connection with any violation of said act.

This appointment and the authority of said agent are irrevocable.

Signed and sealed this day of, 19...,
by the aforesaid applicant (pursuant to a resolution or vote of its board of directors duly passed on the days of, 19...). Clause in parenthesis not required of individuals or partnerships.

(Corporate Seal if Corporation)

NOTE.—If applicant is a partnership, all partners must sign. If a corporation or association, the application must be signed by two officers of the applicant, thereunto duly authorized, by resolution of the board of directors.

State of, County of, ss.

Personally appeared before the undersigned, a notary public in and for the above named county and state, the day and date above named, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of such applicant for the purposes therein set forth (if applicant is a corporation or association on the following) and that they are and, respectively, of such corporation, and are duly authorized to execute the foregoing instrument.

(Notarial Seal)

Notary Public in and for County, State of

§ 395. Form — Application for Registration of Securities — North Carolina.

STATE OF NORTH CAROLINA CORPORATION COMMISSION Department Administering Capital Issues Law

APPLICATION FOR REGISTRATION OF SECURITIES

To Commissioner Administering Capital Issues Law:

The undersigned hereby makes application for the qualification and registration of the of, a corporation of the
(Stock or bonds)

State of, with its head office at, in the city of
....., state of, and does hereby set out:

1. Corporate name

2. Officers:

3. (a) Securities:

Stock: Capital authorized \$....., paid in \$....., of
which amount \$..... was in cash and \$..... in notes or
.....

Bonds: Kind now outstanding \$.....; when
issued Interest rate; maturity dates

(b) To be qualified and registered:

Stock: shares of par value of \$.....; total issue,
\$.....; if no par value, proposed selling price, \$.....;
if preferred, interest rate,

Bonds: Kind,; number,; value each,
\$.....; total proposed issue, \$.....; interest rate,

4. Attached hereto are copies of all matters required by the Capital
Issues Law, 1925, and such other information, including copies of all con-
tracts for the sale of the securities, as required by the Capital Issues Law,
1925, or the commissioner, all of which are hereby specifically made a part
of this application as fully as if the same were herein set out.

5. The following detailed information is hereby given:

Name of company issuing securities,; where incorpo-
rated,; when; process officer in North Caro-
lina,; total issue of securities, \$.....; total amount
sold on date of this application, \$.....; total issue to be quali-
fied and registered, \$.....; kind of securities to be registered,
.....; par value, \$.....; if no par value, proposed selling
price, \$.....

6. Name and address of each corporation, partnership or individual who
will act as dealer or salesman in the sale of these securities:
.....

7. It is hereby certified that this application has been duly authorized by
the board of directors of the said corporation.

8. It is understood and agreed that the registration of these securities may be revoked at any time, as provided by law.

(Seal)

By.....

President.

.....
Manager.

Attest:

Secretary.

Sworn to and subscribed before me, this day of
....., A. D. 192....

(Official Seal)

§ 396. Form—Statement to State Securities Commission— North Dakota.

To the State Securities Commission of North Dakota:

(Name of company)

.....
(Address)

} No.

Makes the following statements in compliance with Section 3, Chapter 182, Session Laws of the State of North Dakota, 1923:

[1] The is a corporation, incorporated under the laws of the state of on the day of, 19...; its authorized capital stock is \$.....; divided into shares of common and shares of preferred stock, with a par value of \$....., and that it has an authorized bond issue of \$.....

Attached hereto are certified copies of the charter and all existing by-laws of said corporation and marked respectively Exhibits "A" and "B."

[2] That the following is a true statement of its officers and directors and the names of all persons owning as much as ten per cent (10%) of its capital stock:

OFFICERS AND DIRECTORS.

NAME	ADDRESS	Number Shares and Bonds Owned			Actual Cash Invested in Company	Salary per Year	Estimate Net Worth	Time Devoted to Company
		Common	Preferred	Bonds				
President.....
Vice President
Secretary.....
Treasurer
General Manager
Trustees and Directors:								
1
2
3
4
5
6
7
8
9
10

Stockholders owning as much as 10% of stock each.

11.....	.....
12.....	.....
13.....	.....
14.....	.....
15.....	.....

[3] That the following is a full and correct statement of its capital stock and securities on this date:

Authorized Capital	{	Preferred Stock, \$.....
		"No Par" Stock, \$.....
		Common Stock, \$.....
Issued and Outstanding.....	{	Preferred Stock, \$.....
		"No Par" Stock, \$.....
		Common Stock, \$.....
Bonds authorized		\$.....
Bonds issued		\$.....
Other securities called		Authorized, \$.....
Other securities called		Issued, \$.....

[4] That the following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.

	No. Shares	*Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion
Commissions
Salaries.....
Dividends.....
Totals.....

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with the value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion
Commissions
Salaries.....
Dividends.....
Totals.....

"NO PAR" STOCK .

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....

"NO PAR" STOCK—Continued.

	No. Shares	Actual Value	Remarks
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash.....
Notes.....
Real Estate.....
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

[5] Attached hereto, marked Exhibit "C," is a statement describing fully the real estate, plant, equipment, patents, good will, formulae, or intangible assets, received in exchange for stock.

NOTE.—The Department will insist on a full statement touching each item mentioned in this paragraph. Failure to comply will surely bring adverse action from the board.

[6] That the following is a complete and correct statement of its assets and liabilities:

ASSETS.

	Amount	Write Nothing in This Column
Real Estate.....
Bills Receivable.....
Accounts Receivable.....
Cash on Hand.....
Cash in Banks.....
Other Assets as Follows:
Totals.....

LIABILITIES.

	Amount	Write Nothing in This Column
Common Stock Outstanding:
Preferred Stock Outstanding..
Bonds Outstanding.....
Mortgages.....
Bills Payable.....
Accounts Payable.....
Sinking Fund or Reserve.....
Surplus.....
Other Liabilities as Follows:
Totals.....

Total amount of securities \$.....

Total amount of securities prior in interest or lien \$.....

[7] Attached hereto and marked Exhibit "D" is a true copy of the mortgage or instrument creating such lien (if the securities are secured by mortgage or other lien), and a competent appraisal of the property covered by such mortgage or lien, with a specific statement of all prior liens thereon, if any.

[8] That attached hereto, marked Exhibit "E," is a true and correct trial balance sheet of its books on the date of the above statement.

[9] That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.	Profit.
Carried to Surplus.....	Undivided Profits, 192..
Dividends, Common	Gross earnings. (Specify
Stock.....per cent..	sources)
Dividends, Preferred	
Stock.....per cent..	
Interest paid on bonds..	
Interest borrowed money	
Operating Expenses	
Commissions.....	
Salaries.....	
Gain	Loss
Total.....	Total.....

[10] That attached hereto, marked Exhibit "F," is a true and complete statement of its receipts and disbursements for the past months, as shown by its books.

(6 or 12)

[11] Attached hereto is a true copy of the written consent of the Company, to the commencement of actions against it and the service of process upon it in the state of North Dakota by service of process on the secretary of state of the state of North Dakota, together with a copy of the resolution of the board of directors authorizing the execution of such written consent, which said company has caused to be filed in the office of the secretary of state of the state of North Dakota.

[12] Exhibit "G," attached is a true copy of the "security" which the said intends to sell in the state of North Dakota which said security will be sold for the following named price and on the following terms, and will not be sold or offered for sale, in North Dakota at any other price or on any other terms, without the consent of the banking department:

[13] That the promotion expenses of the company will not exceed per cent of the capital stock. (There must also be included in this statement what arrangement, if any, has been made to absorb this expense.)

[14] That the following is the general plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold: (Make full statement.)

[15] That it has adopted the following plan for the sale of its stock:

[16] That attached hereto, marked Exhibit "H," is a true and complete copy of each contract made, or which will be made, with any person, officer,

agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this statement and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

[17] Accompanying this statement and made a part hereof by reference are copies of each public prospectus and all advertising matter used by the said and to be used in the state of North Dakota.

[18] References:

NOTE.—Please give at least four references as to the character, responsibility and financial standing of each director. Also eight references as to the company itself.

Wherefore, Your petitioner, in view of the showing herein made, does respectfully pray that authority be granted it to sell its securities as follows: \$..... common stock, \$..... preferred stock, \$..... bonds, and \$..... other securities, in accordance with the provisions of the above mentioned law.

In Testimony Whereof, We have hereunto set our hands
and affixed the official seal of this company, this the
..... day of, 192....

(Seal)

.....
(Company)

By.....

Attest:

Secretary.

State of, County of, ss.

....., president, and, secretary, of the Company, of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true,

.....
President.

.....
Secretary.

Subscribed and sworn to before me this the
day of, 192....

.....
Notary Public.

My commission expires

§ 397. Form—Application to Sell Securities—Ohio.

In the matter of the application of
 Inc. } Application.
 for leave to issue and sell its securities.

To the Honorable Commissioner of Corporations of the State of Ohio:

There is attached hereto and made a part hereof.

(a) Certified copy of the articles of incorporation or association of the issuer, its regulations and by-laws.

(b) Certified copies of all the minutes of stockholders and directors relative to the issue of such securities.

(c) Fee due for filing the application five dollars.

The following statement sworn to by the president and secretary of the issuer of such securities, shows in detail the items of cash, property, service, patents, good will and any other consideration for which such securities have been or are to be issued in payment.

1st. That its principal business office is located at, and that it has branch offices at

2d. That it was incorporated on the day of, 19..., under the laws of the state of, with an authorized capital stock of \$....., divided into shares of common and shares of preferred, with a par value of \$..... each; and that it has an authorized bond issue of \$.....

3d. That the following is a full and correct statement of its capital stock and securities on this date:

Authorized Capital	{ Preferred Stock, \$.....
	{ "No Par" Stock, \$.....
	{ Common Stock, \$.....
Issued and Outstanding.....	{ Preferred Stock, \$.....
	{ "No Par" Stock, \$.....
	{ Common Stock, \$.....
Bonds authorized	\$.....
Bonds issued	\$.....
Other securities called, Authorized,	\$.....
Other securities called, Issued,	\$.....

4th. That the following is a true and complete statement showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.

	No. Shares	*Actual Value	Remarks
Actual Cash
Notes
Real Estate
Plant.....
Equipment
Patents.....
Organizing.....
Promotion
Commissions

COMMON STOCK—Continued.

	No. Shares	*Actual Value	Remarks
Salaries.....
Dividends.....
Totals.....

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with the value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion
Commissions
Salaries.....
Dividends.....
Totals.....

"NO PAR" STOCK

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment
Patents.....
Organizing.....
Promotion
Commissions
Salaries.....
Dividends.....
Totals.....

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment
Patents.....
Organizing.....
Promotion
Commissions
Salaries.....
Dividends.....
Totals.....

5th. Attached hereto, marked Exhibit A, is a statement describing fully the real estate, plant, equipment, patents, promotion, organization or other consideration, and the amount and kind of stock issued therefor.

6th. That the following is a complete and correct statement of its entire assets and liabilities, at date of this statement.

ASSETS.		
	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand
Cash in Banks
Other Assets as Follows:
Totals

LIABILITIES.		
	Amount	Write Nothing in This Column
Common Stock Outstanding..
Preferred Stock Outstanding..
Bonds Outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus
Other Liabilities as Follows:
Totals

7th. That attached hereto, marked Exhibit B, is a true and correct trial balance sheet of its books on the date of the above statement.

8th. That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.			Profit.		
Carried to Surplus.....	.....	....	Undivided Profits, 192..	.....	....
Dividends, Common			Gross earnings. (Specify		
Stock.....per cent..	.....	....	sources) .....	.....	....
Dividends, Preferred					
Stock.....per cent..	.....	....	.....	.....	....
Interest paid on bonds..	.....	....	.....	.....	....
Interest borrowed money	.....	....	.....	.....	....
Operating Expenses ....	.....	....	.....	.....	....
Commissions .....	.....	....	.....	.....	....
Salaries .....	.....	....	.....	.....	....
Gain .....	.....	....	Loss .....	.....	....
Total .....	.....	....	Total .....	.....	....

9th. That attached hereto, marked Exhibit C, is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

10th. That the following is the general plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold:

11th. That it has adopted the following plan for the sale of its stock:

12th. The following documents attached hereto are made a part hereof:

1. A copy of all contracts, stocks and bonds or other securities which it proposes to make, sell or negotiate to sell to its contributors.

2. Sample copies of all literature or advertising matter used or to be used by such company in the sale of its securities.

13th. That the following is a true statement in regard to its officers and directors:

14th. That its securities will be sold for the following named prices and on the following terms, and will not be sold at any other price or on any other terms without the consent of the commissioner of securities:

.....

15th. That attached hereto, marked Exhibit, is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its securities; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

Remarks:

In Testimony Whereof, We have hereunto set our hands
and affixed the official seal of this company, this
day of, 19....

[Seal]

.....
(Company)

By.....
President.

Attest:
Secretary.

State of, County of, ss.

....., president, and, secretary, of the Company of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me this the
day of, 192....

.....
Notary Public.

(My commission expires)

To the Commissioner of Securities of the State of Ohio:

The undersigned a 1....., having filed with the commissioner all the information required pertaining to its securities respectfully asks that

¹ State whether applicant is a corporation, partnership or individual.

said commissioner issue the certificate as provided in the Securities Law of Ohio giving permission to sell its securities as follows:

\$..... Common Stock.	\$..... "No Par" Stock.
\$..... Bonds.	\$..... Other Securities.
\$..... Preferred Stock.	
2.....	
.....	

§ 398. Form—Notice of Application for License—Ohio.

State of Ohio—Securities Department.

NOTICE.

Know All Men, That, a corporation organized under the laws of, an association, a copartnership, an individual, doing business under the name of with its or his principal place of business at has applied on the day of, 192..., to the commissioner of securities of the state of Ohio for a license to deal in, and in which application the following persons were named as agents:

.....
.....
.....

NOTE.—Strike out description not applicable. Post office addresses of agents must be published.

§ 399. Form—Proof of Publication of Notice of Application for License—Ohio.

One Publication Only. Attach Notice Here.

State of, County of, ss.

....., being duly sworn, says that he is of, the publisher of a newspaper published daily and of general circulation in, Ohio, and known as the, and that the attached notice was published in said newspaper on the day of, 192....

.....

§ 400. Form—Consent to Service and Jurisdiction—Ohio.

Know All Men by These Presents:

That the undersigned
(Insert name under which business is transacted)

2 If applicant is a corporation signature should be of corporate name, signed by president and secretary. If a partnership by all partners, and if an individual by the individual.

■
 (Give legal designation of applicant, whether a corporation, co-partnership
 or individual)

being an applicant for license as a dealer in securities under the Ohio Securities Law.

Does hereby irrevocably consent that any action brought against the above named applicant arising out of and founded upon the fraudulent disposal of any such securities or property by him or his agents, may be brought in any court in Franklin County, Ohio, having jurisdiction of the subject matter, and that in the event proper service of process cannot be had upon such applicant in any such proceeding in such county, service of process made therein by the sheriff of such county, by sending a copy thereof by registered mail, at least thirty days prior to taking judgment in such case, addressed to such applicant at the place of his principal office named in his application filed herewith, or such other place as the above named applicant may hereafter designate in writing filed with the "Commissioner," shall have the same effect as if personally made upon the applicant in said county of Franklin according to the laws of the state of Ohio.

In Witness Whereof, The above named applicant has caused
 this instrument to be signed at on the
 day of, in the year 19....

(Seal)

NOTE.—If applicant is a partnership, all partners must sign. If a corporation or association, the application must be signed by two officers of the applicant, duly thereunto authorized, by resolution of the board of directors, in the form hereto attached, a copy of which must be filed herewith, certified by such officers.

State of, County of, ss.

Personally appeared before the undersigned, a notary public in and for the above named county and state, the day and date above named, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of such applicant for the purposes therein set forth (if applicant is a corporation or association the following) and that they are and, respectively, of such corporation, and are duly authorized to execute the foregoing instrument.

(Notarial Seal)

Notary Public in and for
 County, State of

Resolution.

Copy of resolution adopted by, a corporation, at a meeting of its board of directors, held at on the day of, 19..., pursuant to notice.

Be It Resolved, That and, president and secretary, respectively, of, be authorized and directed to execute for and on behalf of said company, for the purpose of obtaining a license as a dealer in bonds, stocks and other securities and in real estate not located

in Ohio an irrevocable consent, that any action brought against such applicant arising out of and founded upon the fraudulent disposal of such securities or property by such corporation be brought in Franklin County in any court having jurisdiction of the subject matter, and that in the event proper service of process cannot be had upon this corporation in such county that service of process made therein by the sheriff of said county, by sending a copy thereof by registered mail, at least thirty days prior to taking judgment in such case, addressed to this corporation at its principal office named in such application, shall have the same effect as if personally made upon this corporation in such county according to the laws of the state of Ohio.

It is hereby certified that the foregoing is a true and correct copy of a resolution adopted by, a corporation, on the day of, at

Attest:

.....
President.

(Seal)

.....
Secretary.

NOTE.—This resolution is only required when applicant is a corporation.

§ 401. Form—Statement to State Issues Commission—Oklahoma.

To the State Issues Commission of Oklahoma:

.....	} No.
(Name of company)	
.....	
(Address)	

Makes the following statements in compliance with Section 2, Chapter 49, Session Laws of the State of Oklahoma, 1919:

(1) The is a corporation, incorporated under the laws of the state of on the day of, 19...; its authorized capital stock is \$. divided into shares of common and shares of preferred stock, with a par value of \$. and that it has an authorized bond issue of \$. Attached hereto are certified copies of the articles of incorporation and all existing by-laws of said corporation and marked respectively Exhibits "A" and "B."

(1-A) (If the company making this report is a copartnership or an unincorporated association the following requirement must be complied with.)

Exhibit C hereto attached is a copy of the articles of copartnership, or association, or agreement, under which the above company was organized, together with copies of all other papers and contracts pertaining to its organization.

(2) That the following is a true statement of its officers and directors and the names of all persons owning as much as ten per cent (10%) of its capital stock:

OFFICERS AND DIRECTORS.

NAME	ADDRESS	Number Shares and Bonds Owned			Actual Cash Invested in Company	Salary per Year	Estimate Net Worth	Time Devoted to Company
		Common	Preferred	Bonds				
President.....
Vice President
Secretary.....
Treasurer
General Manager
Trustees and Directors:								
1
2
3
4
5
Promoters.								
1
2
3
4
5

Stockholders owning as much as 10 per cent of stock each.

1. ....	.....
2. ....	.....
3. ....	.....
4. ....	.....
5. ....	.....

(3) That the following is a full and correct statement of its capital stock and securities on this date:

Authorized Capital	{	Common Stock, \$.....
		Preferred Stock, \$.....
Issued and Outstanding.....	{	Common Stock, \$.....
		Preferred Stock, \$.....
Bonds authorized		\$.....
Bonds issued		\$.....
Other securities called, Authorized, \$.....		
Other securities called, Issued, \$.....		

(4) That the following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.			
	No. Shares	†Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

†This column should specify the amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.			
	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

BONDS.			
	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....

BONDS—Continued.

	No. Shares	Actual Value	Remarks
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

(5) Attached hereto, marked Exhibit "D," is a statement describing fully the real estate, plant, equipment, patents, good will, formulae, or intangible assets, received in exchange for stock.

NOTE.—The department will insist on a full statement touching each item mentioned in this paragraph. Failure to comply will surely bring adverse action from the board.

(6) That the following is a complete and correct statement of its assets and liabilities:

ASSETS.

	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand.....
Cash in Banks.....
Other assets as follows:
Totals.....

LIABILITIES.

	Amount	Write Nothing in This Column
Common Stock outstanding...
Preferred Stock outstanding..
Bonds outstanding
Mortgages.....
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus.....
Other Liabilities as follows:
Totals.....

(7) That the attached hereto, marked Exhibit "E," is a true and correct trial balance sheet of its books on the date of the above statement.

(8) That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)

Loss.	Profit.
Carried to Surplus.....	Undivided Profits, 192..
Dividends, Common	Gross earnings. (Specify
Stock.....per cent..	sources)
Dividends, Preferred	
Stock.....per cent..	
Interest paid on bonds..	
Interest borrowed money	
Operating Expenses	
Commissions.....	
Salaries.....	
Gain	Loss
Total.....	Total.....

(9) That attached hereto, marked Exhibit "F," is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

(10) (If such securities are secured by mortgage or other lien, this section must be complied with.)

Exhibit "G" hereto attached and made a part hereof is a copy of the mortgage or other instrument creating a lien upon the securities of this company, which exhibit also sets forth a competent appraisal or value of the property covered thereby, together with a statement of all prior liens thereon.

(11) Attached hereto is the consent of the Company to the commencement of actions against it and the service of process upon it in the state of Oklahoma by service of process on the secretary of state of the state of Oklahoma as required by Section 5, Chapter 49, of the Session Laws of 1919.

(12) Exhibit "H," hereto attached, is a true copy of the "security" which the said intends to sell in the state of Oklahoma, which said security will be sold for the following named price and on the following terms, and will not be sold, or offered for sale, at any other price or on any other terms, without the consent of the state issues commission

(13) That the promotion expenses of the company will not exceed per cent of the capital stock. (There must also be included in this statement what arrangement, if any, has been made to absorb this expense.)

(14) That the following is the general plan upon which the company is doing and intends to do business and the purposes for which said securities are to be sold: (Make full statement.)

(15) That it has adopted the following plan for the sale of its stock: ...
.....

(16) That attached hereto, marked Exhibit "I," is a list showing the names, addresses and selling territory within the state of Oklahoma of each agent of said company, and a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written, or implied by which any one has received, or is to receive, any cash, stock, securities, or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this statement and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

(17) Accompanying this statement and made a part hereof by reference are copies of each public prospectus and all advertising matter used by the said and to be used in the state of Oklahoma.

(18) References:

NOTE.—Please give at least four references as to the character, responsibility and financial standing of each director. Also eight references as to the company itself.

(19) Exhibit "J" hereto attached shows a complete statement of any knowledge or information now in the possession of the promoters of this company relative to the character and value of the securities offered, and of the earning power of this company.

(20) Exhibit "K" hereto attached is a list showing the names and addresses of any and all companies and corporations which each promoter and officer has promoted or has been connected with in the past.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this the day of, 19....

.....
Company.
By.....
President.

(Seal)

Attest:
Secretary.

State of Oklahoma, County of, ss.

....., president, and, secretary, of the Company, of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations herein contained and attached are true.

.....
President.
.....
Secretary.

Subscribed and sworn to before me this the day of, 19....

.....
Notary Public.

My commission expires

§ 402. Form—Dealer's Application—Oregon.

To the Corporation Department of the State of Oregon:

Application is hereby made by, of No. street, of the city of, county of, and state of Oregon, for a permit to do business as a dealer, in accordance with the provisions and requirements of Chapter 189, General Laws of Oregon, 1923.

I.

Below find the names and addresses of five persons, including two brokers, who will vouch for the sound moral character and good business repute of applicant:

Name	Occupation	Address
.....
.....
.....

II.

Below find a statement showing for what length of time, in what capacities and at what places, applicant has been engaged in the sale of securities:

III.

The applicant intends to issue due bills, interim certificates, or other written memoranda of sale in lieu of bonds or other securities not on hand for immediate delivery to purchasers, as follows:

IV.

Below find a statement of the names, residences, and business addresses of all persons interested with me, as principals, officers, directors, managing or sales agents, and the nature of the interest of each, together with a concise statement of the financial circumstances of each:

V.

Below is a full statement of assets and liabilities which truly reflects the financial condition of the applicant as at the date of application and which is manifested by the books and records in the office of the applicant:

ASSETS.		
	As per books	Present Value
Cash in banks
Cash on hand
Accounts receivable
Notes receivable
Stocks, bonds or other securities, as per paragraph VI
Real estate
Other assets (specify):
Total assets
LIABILITIES.		
	As per books	Present Value
Notes payable
Accounts payable
Mortgages payable
Depreciation reserve
Other liabilities (specify):
Capital stock (or investment).....
Surplus
Total liabilities

VI.

The following securities are now held by me:
....., amount,, held at \$.....
....., amount,, held at \$.....

VII.

State briefly method of accounting in use:

VIII.

I enclose my check for \$50 as required by Section 2 of Chapter 189, General Laws of Oregon for 1923.

Dated at, Oregon, this day of, 192....
(Signed).....

Applicant.

FOR INDIVIDUAL.

State of Oregon, County of, ss.

I,, applicant, being first duly sworn, depose and say that I am, the applicant herein named; that the statements in said application contained are true and correct.

Subscribed and sworn to before me this day of, 192....

(Seal)

Notary Public for Oregon.

My commission expires

FOR CORPORATION.

State of Oregon, County of, ss.

I, the undersigned, being first duly sworn, depose and say: That I am a duly elected, qualified and acting (president or secretary) of the within named company, as per my signature below; that I am familiar with the conduct of its business and affairs, and that I have investigated and know its financial condition; that I am fully qualified and competent to testify as to the truth of the facts called for by this blank; that I have carefully examined all statements and answers in the within statement and exhibits attached hereto, and that each and all of the representations made are true, and that no material fact in answer to the several questions has been omitted; and I further say that there are no agreements, understandings or contracts, either verbal or written, express or implied, by which anyone has received, or is to receive, directly or indirectly, any consideration in any manner whatever for the sale of the company's securities, or for its promotion, except as specified in this application and the exhibits attached hereto.

(Corporate Seal)

.....
(Title of officer)

Subscribed and sworn to before me at, Oregon,
this day of, 192....

(Notarial Seal)

.....
Notary Public for Oregon.

My commission expires, 192....

When completed with exhibits attached and duly verified, mail statement to, corporation commissioner, Salem, accompanied by the statutory filing fee of \$50.

§ 403. Form—Declaration of Purpose to Engage in Business in Oregon.

Know All Men by These Presents:

That the, a organized and existing under and pursuant to the laws of, having its principal office at number, street, in the of, hereby makes the following declaration of its desire and purpose to engage in business within the state of Oregon, which declaration is accompanied by a duly authenticated copy of its, in compliance with the provisions of Chapter IV of Title XXXIX of Oregon Laws:

The full name under which it proposes to transact business is

The name of the state or country under whose laws it was organized is

The location of its home office is at number, street, in the of

The date of its formation or incorporation was the day of, 19....

The amount of its capital stock is dollars (\$.....).

The nature of the pursuit, business, or occupation in which it is authorized to engage

The location of the principal office within the state of Oregon is at number, street, in the of, county of

The name of its attorney in fact, constituted and appointed in accordance with the provisions of Section 6908, Oregon Laws, is, whose business address is at number, street, in the of, in the county of

The names and addresses of its principal officers, and of its directors or trustees, are as follows:

Names	Official Position	Postoffice Address
.....
.....
.....

The name and residence of its general agent within the state of Oregon is, number, street, in the of, in the county of

In Witness Whereof, Said corporation, in pursuance of a resolution duly adopted by its board of, has caused this declaration to be signed by its president and secretary, and its corporate seal to be affixed, the day of, 19....

(Corporate Seal)	..... (Seal)
	..... (Seal)
	President.
	..... (Seal)
	Secretary.

....., ss.

I,, president, and I,, secretary, of the, being severally duly sworn, depose and say, and each for himself says, that I am president and secretary, respectively, of the, the corporation mentioned in and which executed the foregoing declarations, and that said declaration is a full, true, and correct statement of the matters herein contained according to the best of my information, knowledge, and belief.

Subscribed and sworn to before me this day of, 19....

(Notarial Seal)

....., ss.

I,, secretary of the, being first duly sworn, depose and say upon oath that is the president of said corporation, and that the signature affixed to the above and foregoing declaration is the genuine signature of said; that the corporate seal hereinbefore attached and impressed herein is the corporate seal of said corporation, and was affixed thereto by me, and that the foregoing declaration was executed for the by its president and secretary, pursuant to a resolution of the board of of said corporation duly adopted on the day of, 19...., so help me God.

Subscribed and sworn to before me this day of, 19....

(Notarial Seal)

This declaration must be accompanied by a certified copy of the charter, or articles of incorporation of such foreign corporation, joint stock company or association, certified to by the legal keeper of the original, together with a certificate of the Secretary of State of a State or Territory of the United States, or of the United States Ambassador, Minister, Consul General, Vice Consul or Charge d'Affaires in a foreign country, under whose jurisdiction such corporation, joint stock company or association was formed, that such certifying officer has the requisite official knowledge as to whether such charter or articles of incorporation are of a genuine, valid and subsisting character, and that such charter is duly certified by the officer having the legal custody of the original.

§ 404. Form—Dealer's Preliminary Statement—Oregon.

Of to the Corporation Department of the State of Oregon.

Made as of, 192....

Is this statement made by a person, partnership, corporation, or association?

Give the legal name, in full:

39—Corporate Management

If a corporation or association, under the laws of what state or country organized, and when:

The location of principal office:

Chief officer or managing agent (or attorney in fact, if a foreign corporation) within the state of Oregon with whom correspondence should be had regarding this report, and who should be addressed generally in communications, etc., from the corporation department:

Name,, Title,

Postoffice address,

1. Mention below and briefly describe the securities which it is proposed to issue. Attach hereto, marked Exhibit 1, a sample copy of each kind:

.....

The amount of said stock to be sold, \$....., \$.....

(Common) (Preferred)

2. State the plan to be adopted for advertising and disposing of said securities. Attach hereto, marked Exhibit 2, copy of any prospectus or advertising matter which it is proposed to issue in connection with the sale of such securities, such copy to be signed and bear a serial number.

3. Profit and loss statement and reconciliation of surplus.

(a) If heretofore engaged in business, submit in detail in space provided below a profit and loss statement for the last fiscal period, showing in full detail all of the income and expenses, and showing the proper relationship of the inventories at the beginning and end of fiscal period.

(b) Submit a statement, marked Exhibit 3, giving a "reconciliation of surplus" showing reconciliation of surplus as per balance sheet with net earnings for the above fiscal period.

Profit and loss statement for period ending

4. Attach hereto, marked Exhibit 4, a full statement of assets and liabilities which truly reflects the financial condition of applicant at the date of this application, and which is manifested by the books and records in the office of the applicant:

Attach hereto, marked Exhibit 4-A, a detailed analysis of said financial statement, explaining each item in a comprehensive manner.

If any of the assets are subject to indebtedness, pledged, or otherwise encumbered, state the amount and nature of such indebtedness and when payable.

Also state whether any of the assets, or the corporation itself, is in any way involved in or threatened with litigation.

(Attach all exhibits here)

6. State purpose of issue.

(a) If the said capital stock is to be issued in exchange or disposed of for any other consideration than actual cash to the corporation, state what the actual consideration is to be, specifying the amount and kind of securities exchanged for each item.

(b) Describe fully the real estate, plant, equipment, patents, contracts, services, or other consideration received in exchange for said stock or other securities, stating the value thereof, and mentioning condition of title and encumbrances or indebtedness if any; also whether said property be in any way involved in litigation.

.....
(If more space needed, attach as Exhibit 6)

7. Description of property and business to be followed.

If not already fully explained elsewhere herein, attach hereto, marked Exhibit 7, a statement of the line of business to be followed, and including the following information:

(a) Manner in which the securities are to be disposed of.

(b) Terms of sale, with copies of subscription or contract forms, if sold on contract or on time.

(c) Amount of percentage or commissions or promotion expense allowed to the organizers, promoters, agents or others.

(d) How much, if any, of said securities will be used or issued for promotion and organization.

(e) How the proceeds are to be invested or used.

8. Attach hereto, marked Exhibit 8, copies of papers relating to the organization of the association or corporation.

(a) If a partnership or association, a copy of its articles of copartnership, constitution or by-laws, etc.

(b) If a corporation, give a list of the subscribers to its stock, showing the amount and kind subscribed and amount paid by each, and whether paid in cash or otherwise.

(c) A copy of its by-laws.

(d) If organized under the laws of any other state, or government, incorporated or unincorporated, furnish certified copies of such amended and supplementary articles of incorporation or association, certificates of increase or decrease of capital stock, as are not already on file in the corporation department.

9. If the applicant's assets consist of or include any mining or oil property: (a) Have the claims been patented? (b) If patented, have all taxes thereon been paid? (c) If the claims are unpatented, has all assessment work required by law been done? (d) Has proof of assessment work done during preceding years and including the current year been recorded, and if so, where?

(If more space needed, attach as Exhibit 10)

10. Give a statement of the amount and present distribution of capital stock, bonds, and other securities, as per the following table:

	Non-Par Stock	Common Stock	Preferred Stock (if any)
Subscribed, and issued.....	\$.....	\$.....	\$.....
Subscribed, not yet issued...	\$.....	\$.....	\$.....
Total subscribed	\$.....	\$.....	\$.....
Unsubscribed, if any.....	\$.....	\$.....	\$.....
Total authorized capital...	\$.....	\$.....	\$.....
Number of shares authorized			
Par value per share.....	\$.....	\$.....	\$.....

Bonds: Amount authorized, \$.....; issued, \$.....
Other securities, called, \$.....; authorized, \$.....; issued,
\$.....

State of Oregon, County of, ss.

We, the undersigned, being first duly sworn, each for himself deposes and says: That the undersigned are the duly elected, qualified and acting officer and directors of the within named company, as indicated below; that we are familiar with the conduct of its business and affairs, and that we have investigated and know its financial condition; that we are fully qualified and competent to testify as to the truth of the facts called for by this blank; that we have carefully examined all statements and answers in the within statement and exhibits attached hereto, and that each and all of the representations made are true, and that no material fact in answer to the several questions has been omitted; and we further say that there are no agreements, understandings or contracts, either verbal or written, express or implied, by which anyone has received, or is to receive, directly or indirectly, any consideration in any manner whatever for the sale of the company's securities, or for its promotion, except as specified in this application and the exhibits attached hereto.

....., President.
....., Secretary.
....., Director.
....., Director.
....., Director.

Subscribed and sworn to before me at, Oregon,
this day of, 192....

(Notarial Seal)

.....
Notary Public for Oregon.

My commission expires, 192....

The foregoing verification must be made by two executive officers and at least three directors.

When completed with exhibits attached and duly verified, mail statement to, corporation commissioner, Salem, accompanied by the statutory filing fee of 1/10 of 1 per cent upon the face value of the securities for the sale of which application is made; provided, that such fee shall not be less than \$10 nor more than \$100.

§ 405. Form—Power of Attorney—Oregon.

Know All Men by These Presents:

That is a corporation duly organized under and by virtue of the laws of, having its principal place of business in, in the state of

That said has made, constituted and appointed, and does hereby make, constitute and appoint, a citizen of the United States, and a citizen and resident of the state of Oregon, residing at, Oregon, and whose place of business is No., street, its true and lawful attorney in fact and authorized agent for it, and in its name, place and stead to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the courts of the state of Oregon, or United States courts therein, and upon whom all lawful writs, processes and summonses may be served with the same effect as though the company existed in the state of Oregon, requisite and necessary to give competent and complete jurisdiction of the said to any of the said courts;

Giving and granting unto said full power and authority to do and perform every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the said might or could do if personally present, hereby ratifying and confirming all that the said shall lawfully do or cause to be done by authority thereof.

This power of attorney is irrevocable except by the substitution of another qualified person for the one hereby appointed attorney in fact.

In Witness Whereof, Said corporation, in pursuance of a resolution duly adopted by its board of, has caused this instrument to be executed in its name by its president and secretary, and its corporate seal to be hereto affixed the day of, 192....

(Corporate Seal)

..... (Seal)

..... (Seal)

President.

..... (Seal)

Secretary.

.....,, ss.

This Certifies, That on this day of, 192..., before the undersigned, a in and for, personally appeared the within named, the president, and the secretary of the, the corporation mentioned in and which executed the foregoing power of attorney and acknowledged that they executed the same by the authority and on behalf of said pursuant to a resolution of the board of of said corporation, duly adopted on the day of, 192...; and, the secretary of said, further acknowledged that the

corporate seal hereinbefore attached and impressed herein is the corporate seal of said corporation and was affixed thereto by him.

In Testimony Whereof, I have hereunto set my hand and
..... seal this day of, 192....

(L. S.)

To be executed, acknowledged, and recorded in the office of the corporation commissioner by a foreign corporation. Required under the provisions of Section 6908, Oregon Laws.

§ 406. Form—Dealer's Application for Registration—Pennsylvania.

To the Secretary of Banking:

The undersigned,, a
(State whether business is done as a corporation, partnership or individual
or under deed of trust)

under the laws of the state of, hereby applies for registration as a dealer under "The Securities Act," approved the fourteenth day of June, A. D. 1923, and makes the following statement of fact:

1. Applicant's principal place of business is located at No.
(Do not use incorporating address)
street, city of, state of, and its principal place of
business in Pennsylvania at No. street, city of,
county of

2. Branch offices of applicant in Pennsylvania are located at
No., Street, City, County

3. Name under which business is conducted

4. How long has applicant been a dealer in securities?

5. In what state or states is applicant now licensed or registered?

6. In what state or states has applicant ever applied for license or registration?

7. Has applicant ever been refused a license or registration in any other state or had a license or registration revoked? (Give particulars)

8. Has applicant, or any officer, director or partner, been charged with violation of any law governing the sale of securities in any state?

9. Has applicant ever been convicted of a crime?

10. Has applicant ever been declared a bankrupt or been in the hands of a receiver?

11. Of what stock exchanges is applicant now a member?

12. Has applicant ever been a member of a stock exchange?

13. Has applicant ever severed connections with any stock exchange? (Give particulars)

14. Give the names, residences, business addresses, capacity and title of all persons interested in the business as principals, officers, directors or managing agents.

Name	Residence	Business Address	Capacity and Title
.....
.....
.....

15. State briefly the general plan and character of the business of the applicant, specifying the nature of the securities in which it is proposed to deal and the plan of marketing, whether by personal solicitation, advertisement, correspondence or otherwise, whether as principal or broker.

16. Is applicant selling its own issue? If so, answer the following questions:

(a) Does applicant employ its own salesmen?

(b) What commission is to be paid?

(c) For what purpose is additional capital to be used?

17. Give character and location of all business in which the applicant has engaged for the five years immediately preceding the date of this application.

18. Give names and addresses of all persons with whom applicant was associated in business during past five years.

19. Give the names and locations of all banks with which the applicant did business during past five years.

20. There are attached hereto and made a part hereof (strike out papers not applicable):

(a) Five letters of recommendation from responsible men with reference to the applicant's business repute and the business repute of each of the applicant's officers, directors, copartners and principals.

(b) At least one letter from a bank indicating general credit and financial responsibility.

(c) Copy of articles of incorporation certified by the proper state officials and a copy of regulations and by-laws.

(If applicant is a corporation organized under the laws of any other state or territory or government or shall have its principal place of business therein.)

(d) Copy of articles of copartnership.

(If applicant is a limited partnership.)

(e) Copy of articles of association, trust agreement or deed of settlement.

(If applicant is an unincorporated association organized under the laws of any other state, territory or government or having its principal place of business therein.)

(f) Power of attorney appointing the secretary of banking agent for service of process. (See page 4 of application.)

(If applicant is a company organized under the laws of any other state or having its principal office therein or if a non-resident individual.)

(g) Certified copy of resolution of board of directors, trustees or managers authorizing the president and secretary to execute the said power of attorney. (See page 4 of application.)

(If applicant is a corporation or association.)

(h) Sworn statement of financial condition of applicant as of close of preceding month.

There is enclosed ten dollars, being the fee due on filing this application.
(Sign here)

(Corporate Seal, if Incorporated)
.....
.....

NOTE.—If the applicant is a corporation or association, this application must be signed and sworn to by the officers duly authorized to execute papers on behalf thereof. If applicant is a co-partnership, this application must be signed and sworn to by all partners.

State of Pennsylvania, County of, ss.

On this day of, A. D. 19..., before me, a notary public, personally appeared, who, being duly sworn, according to law, do... depose and say that, to the best of knowledge and belief, the statements contained in the foregoing application are true and correct and that complete answers have been given to each of the items contained therein (if the applicant is a corporation or association the following), and that they are and, respectively of such { corporation } and are duly authorized to execute papers on behalf thereof.

(Notarial Seal) Notary Public.

My commission expires

§ 407. Form—Appointment of Agent for Service of Process— Pennsylvania.

Know All Men by These Presents, That the undersigned,, a (state whether business is done as a corporation, partnership, individual or under deed of trust), being an applicant for registration under the provisions of "The Securities Act," approved the fourteenth day of June, A. D. one thousand nine hundred and twenty-three, do... hereby appoint the secretary of banking of the commonwealth of Pennsylvania, and his successors in office, to be the true and lawful attorney and authorized agent upon whom all lawful process may be served in any proceeding against in the proper court of any county of Pennsylvania in which the cause of action may arise or in which the plaintiff may reside; and the said applicant do... hereby agree that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon according to the laws of Pennsylvania or any other state.

This appointment and authority of said agent are irrevocable.

In Witness Whereof, The above named applicant has caused
this instrument to be signed at, on the
day of, A. D. 19....

(Seal)

NOTE.—If the applicant is a copartnership all partners must sign. If a corporation or association, the power of attorney must be signed by the president and

secretary of the applicant, duly thereunto authorized by resolution of the board of directors, a certified copy of which resolution must be filed herewith.

County of, State of, ss.

Personally appeared before the undersigned, a notary public in and for the above named county and state, the day and date above named, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of such applicant for the purposes therein set forth (if the applicant is a corporation or association) and that they are president and secretary, respectively of such { corporation } association } and are duly authorized to execute the foregoing instrument.

(Notarial Seal)

.....
Notary Public.

My commission expires

COPY OF RESOLUTION.

Be It Resolved, That and, president and secretary, respectively, of, be authorized and directed to execute for and on behalf of said company, for the purpose of being registered by the secretary of banking of the commonwealth of Pennsylvania as a dealer in securities, an irrevocable power of attorney appointing the secretary of banking of the commonwealth of Pennsylvania, and his successor in office, to be its true and lawful attorney and authorized agent upon whom all lawful process may be served in any proceeding against it in the proper court of any county of Pennsylvania in which the cause of action may arise or in which the plaintiff may reside; and also to agree for and on behalf of said company that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon the company itself according to the laws of Pennsylvania or any other state.

It Is Hereby Certified, That the foregoing is a true and correct copy of a resolution adopted by, a { association } { corporation } on the day of, A. D. 19..., at

Attest:

.....
President.

(Corporate Seal)

.....
Secretary.

NOTE.—This resolution is required only when applicant is a corporation or association.

§ 408. Form—Application for Registration of Agent or Salesman—Pennsylvania.

This Is to Certify, That the persons named herein, being suitable, have been appointed agents or salesmen for, who request...
(Name and address of dealer)

the secretary of banking of the commonwealth of Pennsylvania to register them as $\left\{ \begin{array}{l} \text{its} \\ \text{his} \\ \text{their} \end{array} \right\}$ agents or salesmen.

There is attached hereto and made a part hereof a sworn statement of each agent or salesman.

There is enclosed \$10, being the fee due on filing this application.

Dated at, this day of, A. D. 19....

Signed.....

(Dealer's name)

By.....

(Name) (Official title)

NAME (Give name in full)	RESIDENCE	BUSINESS ADDRESS
.....
.....
.....

The fee for registering each salesman is \$10. Notice will be given when check is desired.

All checks should be made payable to the state treasurer of Pennsylvania.

Registration certificates will be sent to the dealer unless otherwise requested.

Agents' or salesmen's registration continues until the 31st day of December unless sooner revoked.

§ 409. Form — Statement of Agent or Salesman — Pennsylvania.

1. Name Age
(Write name in full)
2. Business address
3. Residence address
4. Have you read the Pennsylvania law regulating the sale of securities?
.....
5. In what state or states have you applied for license or registration?
.....
6. Have you ever been refused a license or registration in any other state or had a license or registration revoked? (Give particulars)
7. Have you ever been charged with violation of any law governing the sale of securities in any state? (Give particulars)
8. Have you ever been convicted of a crime?
9. Have you ever been declared a bankrupt?
10. Have you ever been a member of a stock exchange?
11. Have you ever been suspended or expelled from any stock exchange?
.....
12. Give name and address of all persons or corporations with whom you were associated in business or by whom you were employed at any time. State in what capacity employed,

13. Give name and location of all banks with whom you did business during the past five years.

14. Give a complete history of your experience in the securities business, as follows:

Period	Name and	Securities				Total
From	to	address of employer	sold	Price	Commission	Amount sold
....
....
....

15. State briefly the general plan and method of selling securities, whether by personal solicitation, advertisement, correspondence or otherwise.

16. How many years' experience have you had selling securities?

17. What part of your time will be devoted to selling securities?

18. What other business will you carry on at the same time?

Signed.

(Applicant for registration as agent or salesman)

Commonwealth of Pennsylvania, County of, ss.

On this day of, 192..., personally appeared before me, a notary public in and for said county and state, the above named applicant for registration as an agent or salesman of, who being

(Name of dealer)

duly sworn according to law, deposes and says that the statements contained in the above application are true and correct.

Notary Public.

My commission expires

§ 410. Form — Application for License to Sell Securities — Philippine Islands.

To the Insular Treasurer,
Manila, P. I.

The of
(Name of applying company) (City) (Province)
by, President, hereby applies for a license to issue and
(Name of president)
sell stocks under the provisions of Act 2581, and begs leave to furnish the following information:

(a) The general plan on which the proposed business is to be conducted is as follows:

(b) The principal office of the corporation is at
(No.) (Street)

.....
(City) (Province)

(c) The name and address of the secretary, and of the treasurer, are:

.....
 (Name of secretary) (Address)

 (Name of treasurer) (Address)

(d) The itemized account of the actual financial condition of this corporation on the day of of 192..., as certified by its accountant, is as follows:

(1) ASSETS:

(1) Value of its real estate..... P.....
 (2) Total bills receivable..... P.....
 (3) Total accounts receivable..... P.....
 (4) Total cash on hand..... P.....
 (5) Stock subscription unpaid..... P.....
 (6) Miscellaneous:
 (a) P.....
 (b) P.....
 Total P.....

(2) LIABILITIES:

(1) Capital stock paid up..... P.....
 (2) Mortgages P.....
 (3) Total bills payable..... P.....
 (4) Total accounts payable..... P.....
 (5) Miscellaneous:
 (a) P.....
 (b) P.....
 Total P.....

(e) Total amount of the promotion expenses to dateP.

(f) The following are the insurance policies covering physical property of the company:

(1).....
 (2).....

(g) The company has been audited by on the day of of 192... (Name of auditor)

(h) Amount of securities to be offered for sale P.....
 (The shares subscribed by the incorporators should be included.)

(i) Enclosed herewith are:

- (1) A sample of our stock certificate,
- (2) A copy of the articles of incorporation (if any),
- (3) A copy of its by-laws (if any),
- (4) The payment to the required twenty pesos tax, and
- (5) A twenty-centavo internal revenue documentary stamp.

Very respectfully,

.....
 (Name of the company)
 By.....
 (Name of its president)

Witnesses to signature:

.....

.....
 (City) (Province) (Day) (Month) (Year)

Town of, Province of....., ss.
 of, being first duly sworn on oath says that
 (Name of affiant) (Residence)
 he is the of the above named applying company, that he has
 (Office)
 been duly authorized by its board of directors to make and sign this appli-
 cation and that the foregoing statements are true to the best of his knowl-
 edge, information and belief.

.....
 (Signature of affiant)

.....
 (Cedula No.) (Place of issue)

.....
 (Date of issue)

Subscribed and sworn to before me this day of
, 192....

(My commission expires December 31, 192....)

.....
 Notary Public.

§ 411. Form—Application to Sell Securities—South Dakota.

BEFORE THE SOUTH DAKOTA STATE SECURITIES COMMISSION.

In the matter of the application of

..... }
 (Name) } No.
 }
 (Address)

for authority to sell its securities in South Dakota.

The Company of represents to the South Dakota
 State Securities Commission:

1st. That the principal business office is located at, and that
 it has branch offices at

2d. That it was incorporated on the day of, 19....,
 under the laws of the state of, with an authorized capital of
 \$....., divided into shares of common and
 shares of preferred, with a par value of \$..... each; and that it has
 an authorized bond issue of \$.....

3d. That the following is a full and correct statement of its capital stock
 and securities on this date:

Authorized Capital	{ Preferred Stock, \$.....
	{ "No Par" Stock, \$.....
	{ Common Stock, \$.....
Issued and Outstanding	{ Common Stock, \$.....
	{ "No Par" Stock, \$.....
	{ Preferred Stock, \$.....
Bonds authorized	\$.....
Bonds issued	\$.....
Other securities called	Authorized, \$.....
Other securities called	Issued, \$.....

4th. That the following is a true and complete statement showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.

	No. Shares	*Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

*This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with value at which these different items were given in to the company and carried on the books.

PREFERRED STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

"NO PAR" STOCK.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

BONDS.

	No. Shares	Actual Value	Remarks
Actual Cash
Notes.....
Real Estate
Plant.....
Equipment.....

BONDS—Continued.			
	No. Shares	Actual Value	Remarks
Patents.....
Organizing.....
Promotion.....
Commissions.....
Salaries.....
Dividends.....
Totals.....

5th. Attached hereto, marked Exhibit A, is a statement giving a true and complete list of the holders of the securities of this company, indicating the consideration which was given for same.

6th. Attached hereto, marked Exhibit B, is a statement describing fully the real estate, plant, equipment, patents, etc., received in exchange for stock.

7th. That the following is a complete and correct statement of its assets and liabilities.

ASSETS.		
	Amount	Write Nothing in This Column
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand.....
Cash in Banks.....
Other assets as follows:
Total.....

LIABILITIES.		
	Amount	Write Nothing in This Column
Common Stock outstanding...
Preferred Stock outstanding...
Bonds outstanding
Mortgages.....
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus.....
Other Liabilities as follows:
Total.....

8th. That attached hereto, marked Exhibit C, is a true and correct trial balance sheet of its books on the date of the above statement.

9th. That the following is a true statement of its profit and loss account for the months prior to this date:

(6 or 12)		Loss.	Profit.
Carried to Surplus.....	Undivided Profit, 192....
Dividends, Common	Gross earnings. (Specify
Stock.....per cent..	sources)
Dividends, Preferred
Stock.....per cent..
Interest paid on bonds..
Interest borrowed money
Operating Expenses
Commissions.....
Salaries.....
Gain	Loss
Total.....	Total.....

10th. That attached hereto, marked Exhibit D, is a true and complete statement of its receipts and disbursements for the past months, as shown by its books. (6 or 12)

11th. That the following is the general plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold:

12th. That it has adopted the following plan for the sale of its stock:

13th. Additional requirements as follows:

1. An itemized statement of its actual financial condition, and the amount of its assets and liabilities.

2. A copy of all contracts, stocks and bonds or other securities which it proposes to make, sell or negotiate to sell to its contributors.

3. Sample copies of literature of advertising matter used or to be used by such investment company in the sale of its securities.

4. A copy of its constitution and by-laws or articles of copartnership or association.

5. If it be an incorporated investment company it shall also file a copy of its charter, and if said company be not organized under the laws of the state of South Dakota it shall be required to comply with the laws relating to the admission of foreign corporations to do business in the state of South Dakota.

14th. That the following is a true statement in regard to its officers and directors:

NAME	ADDRESS	Number Shares and Bonds Owned			Actual Cash Invested in Company	Salary per Year	Estimate Net Worth	Time Devoted to Company
		Common	Preferred	Bonds				
President.								
Vice President.								
Secretary.								
Treasurer.								
General Manager.								
Trustees and Directors:								
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

15th. That its securities will be sold for the following named prices and on the following terms, and will not be sold at any other price or on any other terms without the consent of the state securities commission:

16th. That attached hereto, marked Exhibit J, is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its stock; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which any one has received, or is to receive, any cash, stock, securities or other compensation for the sale of its securities, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the stock securities of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

Remarks:

NOTE.—Please give at least four references as to the character, responsibility and financial standing of each director. Also eight references as to the company itself.

Wherefore, Your petitioner, in view of the showing herein made, does respectfully pray that authority be granted it to sell its securities as follows: common stock, \$..... preferred stock, \$..... bonds, and \$..... other securities, in accordance with the provisions of the above mentioned law:

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this the day of, 192....

(Seal) Company.

By.....
President.

Attest:
Secretary.

State of, County of, ss.

....., president, and secretary, of the Company of, of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

.....
President.

.....
Secretary.

Subscribed and sworn to before me this the day of, 192....

.....
Notary Public.

(My commission expires)

§ 412. Form — Application for Qualification of Investment Company—Tennessee.

Hon. A. S. Caldwell,

Commissioner of Insurance and Banking, Nashville, Tenn.

Dear Sir: The undersigned, (a corporation or firm), hereby make application for authority to transact its business in the state of Tennessee, as required by Chapter 31 of the Public Acts of the Extra Session of 1913, a bill entitled "An act to provide for the regulation and supervision of investment companies." I herewith present to you with this application the following:

1. A statement showing in full detail the plan upon which we propose to transact business and amount of stock desired to be sold in Tennessee.

2. A copy of all contracts, bonds, or other instruments which we propose to make with, or sell to, our contributors.

3. A statement showing the name and street address of our company.

4. An itemized account of our actual financial condition, showing the amount of property, liabilities, etc. (If real estate is owned, a copy of the deed and abstract of property should be filed.)

5. A copy of our constitution, by-laws, and all papers pertaining to our organization; and if a copartnership or association, a copy of articles of said copartnership or association.

6. A sworn statement of amount of commission, salary, or expenses to be paid each agent.

7. If chartered under the laws of any other state, territory, or government, a copy of the laws of such state, territory, or government relating to corporations, and also a copy of its charter.

8. A certified check of \$100, amount of filing fee, which will not be refunded.

9. Written consent, irrevocable, that service may be had on the commissioner of insurance and banking in all actions against the company, as provided in section 4 of the act, to which special attention is directed.

All of the above described papers must be verified by the oath of a member of a copartnership or company, or, if a corporation, by the oath of a duly authorized officer of said corporation, and all such papers which are of record in any public office shall be certified by the officer of whose records they form a part as being correct copies.

Respectfully submitted, this the day of,
192....

.....

State of, County of, ss.

Personally appeared before me,, a notary public in and for said state and county, the above signed, who stated that he is of the, and that the foregoing information and state-

ment and all papers submitted in connection therewith are true and correct.

Subscribed and sworn to before me, this the day
of, 192....

Notary Public.

§ 413. Form—Appointment of Attorney—Tennessee.

Know All Men by These Presents:

That the, a corporation created and organized under the laws of the state of and desiring to transact in Tennessee, pursuant to Chapter 31, Acts 1913, E. S., the business of selling its stock or bonds, does by these presents file this its written consent irrevocable, that actions may be commenced against it in the proper court of any county in this state in which the cause of action may arise, or in which the plaintiff may reside, by the service of process on the secretary of state; and to this end the does by these presents stipulate and agree that service of process on the secretary of state of the state of Tennessee to acknowledge service of all courts, to be as valid and binding as if due service had been made upon the company itself according to the laws of Tennessee or of any other state in which this company may be authorized to do business, and to this end the said does authorize the secretary of state of the state of Tennessee to acknowledge service of all legal process, whether mesne or final, for and in behalf of it, the said above named corporation, in said state of Tennessee, in any judicial proceeding which may, within the said state of Tennessee, be instituted against it, the said company, or to which it may be a party, and the said does hereby consent to and with the said state of Tennessee, for the benefit of all persons concerned, that service of such process upon said secretary of state shall be taken and held to be as valid as if served upon it, the said company above named, according to the laws of Tennessee, or of any other state, and the said does hereby further consent that this agreement and stipulation shall be irrevocable and the said secretary of state shall be considered and held as continuing to be attorney for it, the said company, for the purposes of process aforesaid, in any action against it, the said above named company, which may arise.

In Witness Whereof, The said, president, and said, secretary, in accordance with a resolution of its board of directors, duly adopted by said board, on the day of (a certified copy of which is hereunto attached), has to these presents affixed its corporate seal, and had its corporate name subscribed hereto by its president, attested by its secretary, in the city of, in the state of, on this the day of, A. D.

(Seal)

Attest:
Secretary.

By.....
President.

§ 414. Form—Resolution Appointing Attorney—Tennessee.

I,, secretary of the of, do hereby certify that the following is a full, true and correct copy from the corporate records of said company of a resolution duly adopted by the board of directors thereof, at a meeting of said board, a quorum thereof being present and acting on the day of, to wit:

Whereas, Under and by virtue of chapter 31 of the Public Acts of Tennessee, passed September 27, 1913, and approved the same day, this company is required to file its written consent, irrevocable, that actions may be commenced against it in the proper court of any county in the state of Tennessee, in which a cause of action against this company may arise, or in which the plaintiff may reside, by the service of process on the secretary of state of the state of Tennessee, and stipulating and agreeing that such service of process on the secretary of state shall be taken and held in all courts to be as valid and binding as if due service had been made upon the company itself according to the laws of Tennessee, or any other state, and requiring that said written consent shall be authenticated by the seal of this corporation and by the signature of the president and secretary hereof, and shall also be accompanied by a duly certified copy of the order or resolution of the board of directors authorizing the president and secretary to execute the same. Therefore be it

Resolved, That the president and secretary of this corporation be authorized for and on behalf of this company to enter into a written agreement with the state of Tennessee as required by section 4 of said chapter 31 of said Acts of Tennessee, passed September 27, 1913, and approved on the same day, and fully bind the company thereby, in as full and ample a manner as is by said act provided, and that said agreement when so entered into shall be in every respect binding on this, and that said officers be instructed and authorized to authenticate said agreement by affixing the corporate seal of this company to said written agreement aforesaid and that a duly certified copy of this resolution accompany said written agreement.

Given and certified, at the principal office of said company, in the city of, state of, and the common seal thereof hereto affixed by the undersigned, having custody of the same as secretary of said company, this day of, 192...

.....
Secretary.

§ 415. Form—Bond for Blue Sky Law Company—Tennessee.

State of, County of, ss.

Know All Men by These Presents:

That we, the undersigned, being officers of the
(Here insert name of company)

and the said as principals; and we

(Here insert name of company)

as sureties, do hereby acknowledge ourselves officially and personally held and firmly bound unto

(Here insert name of president of company)

president, for the use and benefit of the Tennessee stockholders in the sum of \$..... conditioned that all moneys arising out of the sale of the stock of said company in the state of Tennessee shall be faithfully and honestly held in trust and accounted for, or expended in the purposes for which the company was organized.

In the event the money arising out of or received for the sale of the stock of said company in the state of Tennessee shall be faithfully and honestly expended for the purposes for which the company was organized, or accounted for in liquidation, then this bond shall be null and void. Otherwise to remain in full force and effect. In the event of a breach of above bond any stockholder may bring suit against the principals or sureties, or both on the bond and for the amount that has not been faithfully and honestly accounted for or expended for the purposes for which the company was organized.

Witness our hand this day of, 192...

Sureties Principals

.....
 (Name of company)

State of, County of, ss.

Before me, the undersigned authority, on this day personally appeared, known to me to be the persons whose names are subscribed to the foregoing instrument and each acknowledged that they executed same for the purposes and conditions therein expressed, and that their combined property is equal to the amount of this bond.

Given under my hand and seal of office this day of, 192...

.....
 Notary Public.

(Note: Bond must be in amount of stock expected to be sold in State of Tennessee.)

§ 416. Form—Petition for License to Sell Securities—Ver-
mont.

VERMONT STATE BANKING DEPARTMENT.

Application of }
 (Name) }
 } No.
 (Address) }
 for authority to sell its securities in Vermont under }
 the provisions of Act No. 170, Laws of 1912. }

The Company of represents to the commissioner
of banking and insurance of Vermont:

1st. That its principal place of business is and that it has
offices at

2nd. That it was incorporated on the day of, A. D. 19..., under the laws of the state of, with an authorized capital of \$....., divided into shares of common and shares of preferred, with a par value of \$..... each; and that it has an authorized bond issue of \$.....

3rd. The following is a list of its officers and directors:

NAME	ADDRESS	Number Shares and Bonds Owned			Actual Cash Invested in Company	Salary per Year	Estimate Net Worth	Time Devoted to Company
		Common	Preferred	Bonds				
President.								
Vice President.								
Secretary.								
Treasurer.								
General Manager.								
Trustees and Directors:								
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

4th. That the following is a true statement of its assets and liabilities on date of application:

ASSETS		LIABILITIES.	
	Amount		Amount
.....
.....
.....

5th. That it wishes to sell in Vermont the following securities:

6th. References:

NOTE.—Please give at least two references as to the character, responsibility and financial standing of each director. Also four references as to the company itself.

In Testimony Whereof, We have hereunto set our hands and affixed the official seal of this company, this day of, A. D. 19....

(Seal)

.....
Company.

By.....

Attest:

.....
President.

Secretary.

State of, County of, ss.

....., president, and, secretary, of the Company of, of lawful age, being first duly sworn, depose and say that they each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true:

.....
President.

.....
Secretary.

Subscribed and sworn to before me the day of, A. D. 19....

My commission expires

.....
Notary Public.

§ 417. Form—Application for Sale of Securities—Virginia.

COMMONWEALTH OF VIRGINIA.

STATE CORPORATION COMMISSION—SECURITIES DIVISION.

Data Submitted Pursuant to "Blue Sky Law" With Reference to Sale of "Speculative Securities."

....., State of, 19....

1. (a) Name (in full) of applicant

(b) Is the applicant also the "promoter" of the securities?

"The word 'promoter,' as used in this act, shall include any person, agent, broker, partnership, association or corporation, who shall sell, offer for sale, advertise, or do any act in furtherance of the sale, barter or exchange of any 'speculative securities' as defined in this act." As regards who the "seller" or "promoter" is, will ordinarily be settled,

for the purpose here involved, by the contract of sale. If the contract is with the maker or issuer of the securities proposed to be sold, the maker or issuer will be the promoter, and the party that should make the application to the commission. If, on the other hand, the contract is with some one other than the maker or issuer, such as a fiscal agent or underwriting concern or company, such party will probably be the promoter, and the one that must make the application. In the latter case, complete information with reference to the "promoter" is also required, forms for which will be furnished on application.

- (c) Classification (corporation, firm or individual)
- (d) Principal office
- (e) Date and place of organization
- (f) Law under which organized (if corporation, or organized under any special statute or law).
 - Sec. Code or Statutes of..... State of.....
 - Chap..... Laws of State of.....
- (g) If a corporation, submit copy of charter, together with any amendments thereto, and by-laws; if a partnership, copy of articles of association and all other papers pertaining to its organization.

See Exhibits 1 (g)-a and 1 (g)-b.
- (h) Affiant is engaged in, and for last past has been engaged in at, in the state of,
 (Months or years)
 (Kind of business)
 and the authorized capital stock or capitalization of affiant is as follows:

- (i) The issued capital stock of affiant is as follows:
- (j) List all officers, trustees or directors, if corporation, or of partnership or association:

Official Capacity	Name	Salary	Business Address	Interest Owned		Cash Invested	Net Worth	Time Devoted to Company
				Preferred Stock	Common Stock			
..... President.
..... Vice President.
..... Secretary.
..... Treasurer.
..... General Manager.
..... Directors or Trustees:

(k) Statement setting forth length of time the officers, and directors or trustees (or proposed officers, etc., or men in charge, or to be in charge, of the enterprise designated) have resided in their present abode, their occupations, and any other data of importance throwing light on their standing or ability to contribute to the success of the enterprise. See Exhibit 1 (k).

(l) Applicant warrants that the total promotion, flotation, organization and underwriting expenses of the enterprise will not exceed% of the selling price of the securities issued or to be issued. (If in doubt with respect to proper basis for calculations under (1), exhibit may be submitted explaining what expenses have been included and what excluded in results reached.)

(m) Assets and liabilities of affiants as of, 19....

ASSETS.

	Actual Value	Book Value
Real Estate
Bills Receivable
Accounts Receivable
Cash on Hand
Cash in Bank.....
Stock Subscription Unpaid.....
Total.....

LIABILITIES.

	Amount
Preferred Stock Outstanding
Preferred Stock Subscribed but Unpaid.....
Common Stock Outstanding
Common Stock Subscribed but Unpaid.....
Bonds Outstanding
Mortgages
Bills Payable
Accounts Payable
Sinking Fund or Reserve.....
Surplus
Total.....

2. (a) Securities issued and proposed to be issued.

Kind of Class of Securities*	Par Value	Total Issue Authorized	Issue Outstanding	Offered Now		Securities Prior Thereto in Interest or Lien
				In Virginia	Elsewhere	
.....
.....
.....

*State whether preferred stock, common stock, bonds, or however designated. State amount called for on the basis of total par or face value.

(b) Copy of securities (i. e., stock certificate, bond, or other evidence of ownership or participation) proposed to be offered in Virginia under this application.
See Exhibit 2 (b).

(c) Plan under which the securities in question are to be sold or offered for sale:
Method of sales (agents, mail, etc.)
Terms and price proposed to be asked for the securities proposed to be sold (amount of cash, property, services and other conditions—describe fully):
Is any special plan or method adopted to insure payment into the treasury of the enterprise of money or other consideration to be paid agents by purchasers of the securities here involved? If so, what?
Will agents be bonded? If so, give details.
(d) Amount of commission offered or paid, or to be offered or paid, either in money or otherwise, directly or indirectly, to promote sale? (See section 17 of the act.)
(e) Two proofs of proposed printed subscription contract, complying with Sec. 2, Clause 13, and Sec. 10 of the act. (It is suggested that contract be submitted for approval before printing.)
See Exhibit 2 (e).

(f) What profit, gain or advantage is in any way advertised or promised to induce the sale?
(g) Copy of any prospectus or advertising matter to be used in connection with the promotion.
See Exhibit 2 (g).

(h) Have securities of the enterprise here involved been offered, are they being offered, or is it proposed to offer them in other states?

If so, in what states?

What was the result of such applications presented?

(i) Names, addresses and selling territories in Virginia of any agents or individuals by or through whom it is proposed to sell the securities involved, their applications and evidence of good character.

NAME	ADDRESS	SELLING TERRITORY
.....
.....
.....

(For applications to the commission and evidence of good character, use commission's form.)

See Exhibit 2 (i).

3. (a) Describe exactly and in detail nature of the proposition or business to which securities, which it is proposed to sell, pertain, where such business and its properties are located, plan on which business is to be conducted, results of operations if operating, use to be made of proceeds from sale of securities, and any other information of value concerning the business as a whole.

(b) What intangible assets does the issuing company own? What consideration was paid or will be paid for same?

4. (a) Gross and net earnings of maker or issuer of, or enterprise or business underlying securities proposed to be sold or promoted or period from to*

*One year prior to date of this application, if enterprise or concern so long in operation; or for period in operation, if less than one year. Do not include items (such as proceeds of sale of securities), which are of a capital nature and should be included in statement of assets and liabilities.

REVENUES AND EXPENSES

Revenues From Operation (Classify)

1. ....	.....
2. ....	.....
3. ....	.....
4. ....	.....
5. ....	.....
6. ....	.....
7. Total Revenue (1-6) .....	.....

Expenses of Operation (Classify)

8. Salaries of general officers.....	.....
9. Other payroll expenses.....	.....
10. ....	.....
11. ....	.....
12. ....	.....
13. ....	.....
14. ....	.....
15. ....	.....
16. ....	.....
17. Total Expenses (8-16) .....	.....
18. Operating income (7-17) .....	.....
19. Interest (on bonds, etc.).....	.....
20. Depreciation .....	.....

REVENUES AND EXPENSES—Continued.

21.	Other deductions (insurance, taxes, etc., specify) .....	.....
22.	.....	.....
23.	.....	.....
24.	.....	.....
25.	Total Deductions (19 to 24) inclusive.....	.....
26.	Net income or deficit from operation (18 to 25) .....	.....

(b) Correct description in sufficient detail to indicate clearly nature of the accounts above listed. See Exhibit 4 (b).

(c) Net income of issuer or maker from operation for last five years, or for length of time in operation, if enterprise not in operation for last five years.

DESCRIPTION	Twelve Months Ending*
Revenues from operation.....
Expenses of operation
Operating income
Fixed charges† and depreciation.....
Net income or deficit.....

*Insert appropriate dates in spaces below.

†Interest, taxes, insurance, etc.

(d) The consideration received by the issuer in exchange for the securities issued and outstanding to date; for the securities subscribed but unissued, and for securities proposed to be issued.

NOTE.—For securities other than the three forms following, use separate sheets of paper marked Exhibit 4 (d).

SECURITIES ISSUED OR SUBSCRIBED.
PREFERRED STOCK.

CONSIDERATION	Number of Shares	Actual Value	Book Value
.....
.....

COMMON STOCK.

.....
.....

BONDS.

.....
.....

PROPOSED ISSUE.
PREFERRED STOCK.

CONSIDERATION	Number of Shares	Actual Value
.....
.....

COMMON STOCK.

.....
.....

BONDS.

5. (a) Are securities proposed to be sold secured by mortgage or other lien?

If so, submit a copy of such mortgage or of instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with specific statement of all prior liens thereon, if any.

See Exhibit 5 (a).

(b) Are securities guaranteed, by any person, partnership, association or corporation?

6. Disinterested references (at least four in each case) as to solvency and reputation of (1) seller and (2) maker or issuer of, or enterprise of business underlying securities proposed to be sold if (1) and (2) not identical; and of (3) guarantor, if any, of such securities. It is hardly necessary to add, as regards the various people referred to, that the greater their standing, and familiarity with business conditions, and especially with the general plan and personnel of the particular propositions involved, the greater the weight will attach to any statements they may make. They should, therefore, be chosen in so far as possible with the above fact in mind.*

DISINTERESTED REFERENCES.			
NAME	BUSINESS	ADDRESS	VOUCHING FOR
1.
2.
3.
4.
5.
6.
7.
8.

*If it be desired or necessary to submit additional names, same may be submitted on separate sheet, and referred to. If the enterprise be a new one, just starting now, its reputation, in so far as it has any, and aside from the nature of the proposition, will, of course, depend on the reputation and standing of the men back of it.

Given under my hand this day of,
19....

.....
President of.....

CERTIFICATION (For Individual or Partnership).

County }
City } of to wit:

I,, a notary public in and for the { county }
city } aforesaid in the
state of, do hereby certify that, whose name is here-
unto subscribed, personally appeared before me this day in my said
{ county }
{ city } and having duly been sworn, made oath and says that the mat-
ters and things stated and set forth in the statements hereunto attached,

the same being made in conformity with the requirements of Chap. 359 of the Acts of the General Assembly of Virginia for the year 1920, as amended, are true and correct, and further says that all questions or requests have been answered or complied with as fully as possible.

Given under my hand this day of,
19....

.....
Notary Public.

CERTIFICATION (For Corporation).

County }
City } of to wit:

I,, a notary public in and for the { county }
state of, do hereby certify that { city } aforesaid in the
president of the Company is hereunto subscribed, personally
appeared before me this day in my said { county }
{ city } and having been duly
sworn, made oath and says that he is president of the said company and
that the matters and things stated and set forth in the statements hereunto
attached, the same being made in conformity with the requirements of
Chap. 359 of the Acts of the General Assembly of Virginia for the year 1920,
as amended, are true and correct, and further says that all questions or
requests have been answered or complied with as fully as possible.

Given under my hand this day of,
19....

.....
Notary Public.

§ 418. Form—Issuer's Preliminary Statement—Washington.

.....
of

.....

To the Secretary of State of the State of Washington:

Made as of, 192....

Is this statement made by a person, partnership, corporation, or associa-
tion?

Give the legal name, in full:

If a corporation or association, under the laws of what state or country
organized, and when?

The location of principal office:

Chief officer or managing agent (or attorney in fact, if a foreign corpo-
ration) within the state of Washington with whom correspondence should
be had regarding this report, and who should be addressed generally in

communications, etc., from the corporation department, of the secretary of state at Olympia Washington:

Name,, Title,

Postoffice address,

1. Mention below and briefly describe the securities which it is proposed to issue. Attach hereto, marked Exhibit 1, a sample copy of each kind; if the security be stock, attach sample forms of certificates; if bonds or other security, furnish sample form of such security and also copy of the trust deed or mortgage, or other instrument securing the obligation.

.....
The amount of said securities to be sold or issued, \$.....

2. State the plan to be adopted for advertising and disposing of said securities. Attach hereto, marked Exhibit 2, copy of any prospectus or advertising matter which it is proposed to issue in connection with the sale of such securities, such copy to be signed and bear a serial number.

3. Attach hereto, marked Exhibit 3, a statement in substantial detail of the assets and liabilities of the corporation proposing to issue such securities, sufficiently explaining each item to comprehensively show the financial condition.

If any of the assets are subject to indebtedness, pledged, or otherwise incumbered, state the amount and nature of such indebtedness and when payable.

Also state whether any of the assets, or the corporation itself, is in any way involved in or threatened with litigation.

.....
4. If heretofore engaged in business, attach hereto, marked Exhibit 4, a statement of profit and loss account, showing gross and net earnings of the past year.

In listing expenses and disbursements, segregate and specify amounts paid for the more important purposes, such as operating expenses, salaries, commissions, promotion expense, advertising, interest on outstanding securities or indebtedness, dividends if any and the rate thereof, etc. Also specify source of earnings.

.....
5. Give below a true statement in regard to the officers and directors of the corporation proposing to issue such securities.

NAME	ADDRESS	Number of Shares and Bonds Owned			Actual Money Paid to Company	Salary per Year	Net Worth of Individual	Time Devoted to Company
		Common	Preferred	Bonds				
President.								
Vice President.								
Secretary.								
Treasurer.								
General Manager.								
Attorney.								
Directors or Trustees:								
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

6. State purpose of issue.

If the said capital stock, bonds or other securities are to be issued in exchange or disposed of for any other consideration than actual cash to the corporation, state what the actual consideration is to be, specifying the amount and kind of securities exchanged for each item.

Describe fully the real estate, plant, equipment, patents, contracts, services, or other consideration received in exchange for said stock or other securities, stating the value thereof, and mentioning condition of title and incumbrances or indebtedness if any; also whether said property be in any way involved in litigation.

.....
(If more space needed, attach as Exhibit 6)

7. Description of property and business to be followed.

If not already fully explained elsewhere herein, attach hereto, marked Exhibit 7, a statement of the line of business to be followed, and including the following information:

- (a) Manner in which the securities are to be disposed of.
- (b) Terms of sale, with copies of subscription or contract forms, if sold on contract or on time.
- (c) Amount or percentage or commissions or promotion expense allowed to the organizers, promoters, agents or others.
- (d) How much, if any, of said securities will be used or issued for promotion and organization.
- (e) How the proceeds are to be invested or used.

8. Attach hereto, marked Exhibit 8, copies of papers relating to the organization of the association or corporation.

- (a) If a partnership or association, a copy of its articles of copartnership, constitution or by-laws, etc.
- (b) If a corporation, give a list of the subscribers to its stock, showing the amount subscribed and amount paid by each, and whether paid in cash or otherwise; also a copy of its by-laws.
- (c) If organized under the laws of any other state, or government, incorporated or unincorporated, furnish certified copies of such amended and supplementary articles of incorporation or association, certificates of increase or decrease of capital stock, as are not already on file in the corporation department.

9. Give two or more references, with addresses, who can testify as to the sound moral character and the good business repute of applicant.

10. Give a statement of the amount and present distribution of capital stock, bonds, and other securities, as per the following table:

	Common stock	Preferred stock (if any)
Subscribed, and issued	\$.....	\$.....
Subscribed, not yet issued	\$.....	\$.....
Total subscribed	\$.....	\$.....
Unsubscribed, if any	\$.....	\$.....
Total authorized capital	\$.....	\$.....
Number of shares authorized
Par value per share	\$.....	\$.....
Bonds: Amount authorized, \$.....; issued, \$.....		
Other securities, called, authorized, \$....., issued, \$.....		

State of Washington, County of, ss.

We, the undersigned, being first duly sworn, each for himself deposes and says: That the undersigned are the duly elected, qualified and acting officers and directors of the within named company, as per their signatures below; that I am familiar with the conduct of its business and affairs, and that I have investigated and know its financial condition; that I am fully qualified and competent to testify as to the truth of the facts called for by this blank; that I have carefully examined all statements and answers in the within statement and exhibits attached hereto, and that each and all of the representations made are true, and that no material fact in answer to the several questions has been omitted; and I further state that there are no agreements, understandings or contracts, either verbal or written, express or implied, by which anyone has received, or is to receive, directly or indirectly, any consideration in any manner whatever for the sale of the company's securities, or for its promotion, except as specified in this application and the exhibits attached hereto.

....., President.
 , Secretary.
 , Director.
 , Director.
 , Director.

Subscribed and sworn to before me at, Wash-
 ington, this day of, 192....

(Notarial Seal)

.....
 Notary Public for Washington.

My commission expires, 192....

The foregoing verification must be made by two executive officers and at least two directors.

When completed with exhibits attached and duly verified, mail statement to secretary of state, Olympia, Washington, accompanied by the statutory fee of \$10 upon the face value of the securities for the sale of which application is made; provided, that such capitalization is for less than \$100,000, and for \$25 if the application is for more than \$100,000 of securities.

NOTE.—Make all remittances in money order or bank draft, payable to state treasurer.

CHAPTER XXVI.

BLUE SKY PERMITS.

- § 419. Blue Sky Permits and Orders.
- § 420. Permit to Sell Stock.
- § 421. Permit to Issue Stock as Dividend.
- § 422. Permit to Issue Stock to Finance Mining Company.
- § 423. Permit to Issue to Acquire Properties and Finance Company.
- § 424. Permit to Issue and Pledge Stock.
- § 425. Permit to Issue Partially Paid Up Stock.
- § 426. Amended Permit to Issue Stock to Exploit Patent.
- § 427. Order Approving Escrow Depositary.
- § 428. Escrow Formula.
- § 429. Provision for Supervision of Expenditure of Funds.
- § 430. Order Denying Application.
- § 431. Provision for Deposit of Secret Formula.
- § 432. Permit to Issue Stock and Notes.
- § 433. Order Denying Application.

§ 419. **Blue Sky Permits and Orders.**—It is the practice in some jurisdictions for the permit when issued by the blue sky commission to contain a recital of the facts upon which the action of the commission is based. A number of such permits and orders follow. They serve to give a graphic idea of considerations which determine the blue sky commissions in these matters.

§ 420. **Permit to Sell Stock.**

In the matter of the application of
LAUGHLIN-GOSS, LTD.,
for a certificate authorizing it to sell its securities.

Pursuant to its application, Laughlin-Goss, Ltd., is permitted to sell and issue 200 shares of its capital stock at par, for cash, lawful money of the United States, and so as to net applicant the full amount of the selling price thereof.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: October 1, 1926.

(Seal).

.....
Commissioner of Corporations.

§ 421. Permit to Issue Stock as Dividend.

In the matter of the application of
THE SAWYER TANNING COMPANY

for a certificate authorizing it to sell its securities.

Pursuant to its application the Sawyer Tanning Company is permitted:

As a stock dividend, and in lieu of or in payment of a cash dividend, to issue to its several stockholders, in the proportion to each of them that the number of shares held by him bears to 2500, shares of its common capital stock:

(a) Not exceeding in their aggregate par value the amount of the undivided surplus profits of said company arising from its business, and remaining undistributed to its stockholders as dividends or otherwise, and

(b) Not exceeding in any event in the number of shares to be issued, 500, upon the condition that when, and as said shares shall be so issued, said applicant, pursuant to proper proceedings by its board of directors, shall transfer from its account showing the accumulated and undistributed surplus profits of the company, arising from its business, to an account showing the invested capital of the company, a sum not less than the par value of all of the shares so issued.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: November 27, 1926.

(Seal)

.....
Commissioner of Corporations.

§ 422. Permit to Issue Stock to Finance Mining Company.

In the matter of the application of
KATE HARDY MINING COMPANY

for a certificate authorizing it to sell its securities.

Kate Hardy Mining Company is a California corporation having an authorized capital stock of \$1,000,000, divided into a like number of shares.

Its application is for a certificate authorizing it to issue 250,000 shares to the Jose Realty Company in consideration of the execution by said company to it of a lease and option to purchase the mining property herein described, for \$250,000, and to sell 250,000 shares for the purpose of further developing veins therein.

Said property consists of the "Kate Hardy" and the "Derelict" patented lode mining claims, the "Hooligan" unpatented lode mining claim, and an undivided one-half interest in the "Brush Creek Placer Mining Claim," unpatented, situated in Secs. 29, 30, and 32, T. 19 N., R. 10 E., M. D. M., near Forest, Sierra County, California.

The purchase price of said claims is payable out of the proceeds of the ore extracted from said property. From the net earnings from ore averaging less than \$15 per ton, 25 per cent thereof shall be paid upon said pur-

chase price, and out of the gross proceeds from ore of greater value, payments shall be made as follows:

- 10 per cent from all ore averaging \$15 to \$25 per ton;
- 15 per cent from all ore averaging \$25 to \$50 per ton;
- 25 per cent from all ore averaging \$50 to \$100 per ton;
- 50 per cent from all ore exceeding \$100 per ton.

The title to said mining claims is subject to a deed of trust executed March 16, 1924, for the sum of \$4500, due and payable June 1, 1926.

Within the Kate Hardy claim a quartz vein, formed at the contact of slate and serpentine formations, has been prospected or developed to superficial depth. Its northerly continuation in the Derelict claim being defined by an outcrop of quartz seven feet in width. The development of said vein in the Kate Hardy hill consists of five tunnels at varying levels, between which a narrow shoot of ore has been stoped, the production from workings therein since 1860 being reported to amount to \$225,000.

The equipment on said property consists of a three-stamp mill, blacksmith shop, small compressor, and some camp buildings.

Applicant estimates that an expenditure of at least \$50,000 will be required for equipment and development of said property, and proposes to continue the lower tunnel a distance of 800 feet, and to sink a shaft 500 feet in depth on said vein.

No independent investigation has been made by the state corporation department as to the value of said property other than by reference to mining reports filed with the application herein.

Pursuant to its application said company is permitted to sell and issue shares of its capital stock as follows:

- 1st. To the five incorporators named in its articles of incorporation, one share each at par for cash;
- 2nd. To the Jose Realty Company 250,000 shares as a consideration for the lease and option to purchase the mining property as herein described; and
- 3rd. 250,000 shares at 25 cents per share, for cash, lawful money of the United States, and so as to net the company not less than 80 per cent of the selling price thereof.

This permit is issued upon the following conditions:

(a) That prior to the sale of any of said shares to the public, all certificates evidencing any of said 250,000 shares issued to Jose Realty Company shall be deposited with the commissioner of corporations or with a depository to be selected by said certificate holders and approved by said commissioner, to be held as an escrow pending the further order of the commissioner of corporations, and the receipt of such depository (if other than said commissioner) for such certificates shall be filed with said commissioner, and that while said certificates shall be so held the holders of the shares evidenced thereby shall not sell or offer for sale, or otherwise transfer, or agree to sell or transfer such shares, without the consent of said commissioner shall have been first obtained in writing so to do.

(b) That a true copy of this permit be exhibited and delivered to each

prospective subscriber for or purchaser of said securities before his subscription shall be taken therefor or any sale made thereof to him.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: February 28, 1926.

(Seal)

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Commissioner of Corporations.

§ 423. Permit to Issue to Acquire Properties and Finance Company.

In the matter of the application of
LIBERTY STORES CORPORATION

for a certificate authorizing it to sell its securities.

Pursuant to its application Liberty Stores Corporation is permitted:

1st. To sell and issue shares of its capital stock to N. J. Mitchell and A. Strange, in exchange for all of the property and assets of that certain grocery business, located at, described in said application, first to be transferred to said company, free from all liens and indebtedness, but not exceeding in the number thereof to either or both of them, shares of an aggregate par value in excess of the actual, fair present value of such property and assets, exclusive of good will, and not in any event exceeding in the number thereof, 10,000;

2nd. To sell and issue shares of its capital stock to J. Mayer & Company, in exchange for all of the property and assets of that certain retail grocery business now being conducted in the store known as "Prager's" in, described in said application, first to be transferred to said company, free from all liens and indebtedness but not exceeding in the number thereof, shares of an aggregate par value in excess of the actual, fair present value of such property and assets, exclusive of good will, and not in any event exceeding in the number thereof, 10,000;

3rd. Thereafter, and not otherwise, to sell and issue 40,000 shares of its capital stock at par for cash, lawful money of the United States, for the uses and purposes recited in said application and so as to net the company not less than 90 per cent of the selling price thereof;

4th. Whenever a certificate shall be issued for any of the shares hereinbefore authorized, to issue to said N. J. Mitchell and A. Strange, a certificate or certificates evidencing two shares for every three shares so issued, for the considerations recited in said application.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: August 30, 1926.

(Seal)

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Commissioner of Corporations.

§ 424. Permit to Issue and Pledge Stock.

In the matter of the application of
GREAT WESTERN MILLING COMPANY
for a certificate authorizing it to sell its securities.

Pursuant to its application, Great Western Milling Company is permitted to pledge as collateral security for a loan or loans not exceeding 1000 shares of its preferred stock heretofore authorized to be sold for cash under and by a permit issued to it June 21, 1926, and whenever said loan or loans have been paid or satisfied, said shares may then be sold for cash, in accordance with the terms and conditions of said permit.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: September 30, 1926.

(Seal)

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Commissioner of Corporations.

§ 425. Permit to Issue Partially Paid Up Stock.

In the matter of the application of
BLYTHE CONSTRUCTION COMPANY
for a certificate authorizing it to sell its securities.

Pursuant to its application Blythe Construction Company is permitted to sell and issue not exceeding in the aggregate 100 shares of its capital stock to J. M. Neeland, A. E. Warmington, J. C. Odell, J. H. Borders and Joe Degen, at par, for cash, lawful money, of the United States, and so as to net the company the full amount of the selling price thereon, upon the condition that in issuing each certificate evidencing any of said shares the secretary of the company shall endorse on the face thereof, a statement of the amount paid thereon, and shall subsequently endorse thereon the amount of any further payments on account of the purchase price paid to said company, together with a statement that the unpaid balance of the purchase price of the shares evidenced by such certificate is an obligation of the holder thereof.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: September 30, 1926.

(Seal)

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Commissioner of Corporations.

§ 426. Amended Permit to Issue Stock to Exploit Patent.

In the matter of the application of
CUSHIONED EGG CELL & PAPER COMPANY
for a certificate authorizing it to sell its securities.

Good cause appearing therefor, it is ordered that the permit heretofore issued April 12, 1926, to Cushioned Egg Cell & Paper Company be and it is amended to read as follows:

Cushioned Egg Cell & Paper Company is a California corporation having an authorized capital stock of \$175,000, divided into 17,500 shares of the par value of \$10 each.

In exchange for \$90,000 aggregate par value of its shares, the company proposes to acquire from Arthur E. Burtchaell, of San Francisco, the right to manufacture and sell in California, Oregon, Washington, Idaho, Nevada, Arizona, Utah, and the territories of Alaska and the Hawaiian Islands, collapsible cell cases to be made of strawboard and designed for use in packing eggs or similar fragile articles for shipment, covered by United States Letters Patent No. 1160493.

The applicant has neither assets nor liabilities. It proposes to sell shares of its capital stock for the purpose of providing funds with which to engage in the manufacture and sale of its product. No factory site has been selected and no contracts have been entered into for the purchase of raw materials or other merchandise to be used by the company.

It is estimated that the company can not safely engage in said business until it shall have obtained a fund of \$35,000, which it proposes to expend for machinery and equipment for use in manufacturing strawboard from which the company's devices will be constructed, and as working capital.

The foregoing recitals are based upon the statements contained in said application and the papers filed therewith. No independent investigation has been made by the state corporation department of the value or validity of said letters patent or of the mechanical practicability or marketability of the invention covered thereby.

Subscribers to any of said shares are advised that in event the company fails to receive subscriptions for 4118 shares prior to October 1, 1926, they will be repaid only 92½ per cent of the amount paid by them on account of their subscriptions, as 7½ per cent of all amounts so paid will have been expended in part payment of commissions.

Pursuant to its application said company is permitted:

1st. To sell and issue 4118 shares of its capital stock at par for cash, lawful money of the United States, for the uses and purposes recited in said application; and

2nd. Whenever and as often as any of said shares shall be sold for cash, to issue a certificate for a like number of shares to said Arthur E. Burtchaell for the considerations recited herein.

This permit is issued upon the following conditions:

1. That each subscription for any of said shares shall be upon the following conditions:

(a) That unless bona fide subscriptions for not less than 4118 shares shall have been obtained from responsible subscribers on or before the 1st day of October, 1926, such subscriptions shall be deemed to have been rescinded by the subscriber; and

(b) That prior to said 1st day of October, 1926, and to the obtaining of said subscriptions for said 4118 shares, not less than 92½ per cent of all payments made upon such subscriptions shall be paid to the American National Bank of San Francisco, to be held by it as an escrow. If such

subscriptions for said 4118 shares shall have been so obtained all sums so deposited shall be paid to said company upon its demand therefor and with the written consent of the commissioner of corporations. Otherwise on or after October 1, 1926, said depository shall repay to each subscriber upon his demand therefor, the full amount so deposited with it on account of his subscription.

2. That prior to the sale or issuance of any of said shares said Burtchaell shall duly execute and deliver to the said company, a proper instrument in writing, wherein and whereby he shall assign and transfer to said company in exchange for shares of its capital stock as herein recited, the full and exclusive right to manufacture and market the devices covered by United States Letters Patent No. 1160493 in the states of California, Oregon, Washington, Idaho, Nevada, Arizona and Utah, and the territories of Alaska and the Hawaiian Islands, and shall file a duplicate of such instrument as so executed and delivered with the commissioner of corporations.

3. That when issued, all certificates evidencing any of the shares herein permitted to be issued to Arthur E. Burtchaell, shall be deposited with the commissioner of corporations or with a depository to be selected by said certificate holders and approved by said commissioner, to be held as an escrow pending the further order of the commissioner of corporations, and the receipt of such depository (if other than said commissioner) for such certificates shall be filed with said commissioner, and that while said certificates shall be so held the holders of the shares evidenced thereby shall not sell or offer for sale, or otherwise transfer, or agree to sell or transfer such shares, without the consent of said commissioner shall have been first obtained in writing so to do.

4. That the total commission, compensation and all other expense connected with the sale of any of said shares herein authorized to be sold for cash, shall not exceed 15 per cent of the selling price thereof.

5. That a true copy of this permit be exhibited and delivered to each prospective subscriber for or purchaser of said securities before his subscription shall be taken therefor or any sale made thereof to him.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: April 18, 1926.

(Seal)

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Commissioner of Corporations.

§ 427. Order Approving Escrow Depository.

The Bank of Concord, Concord, California, having been designated by Bay Point Improvement Company as the depository to which each payment made on account of subscriptions to shares of the capital stock of said company shall be paid by the subscribers, to be held as an escrow in

accordance with condition (b) of the permit issued to said company on September 27, 1926,

It Is Ordered, That said bank be, and it is, approved.

.....
Commissioner.

§ 428. Escrow Formula.

That prior to the issue of any of said preferred shares the formula for compounding said soap and all rights and interest in and to any United State letters patent therefor which may be granted subsequently thereto, shall be transferred to said company, and said Oona Ludekens and T. M. Mohler shall execute a writing verified under oath by them in which said formula shall be fully and accurately described in such form and detail that without information other than that stated in such writing, said soap may be perfectly manufactured or compounded in accordance with said formula by following the process as therein described, which writing so executed shall be deposited in a sealed envelope with the commissioner of corporations, or with some depositary designated by said Ludekens and Mohler, and approved by said commissioner, to be held as an escrow subject to the order of said commissioner that the same be delivered to said company or its duly authorized representative whenever it shall appear to said commissioner that such delivery is necessary or expedient for the protection of said company or those interested therein.

§ 429. Provision for Supervision of Expenditure of Funds.

That all of the proceeds arising from the sale of said shares after the deduction of commissions and selling expenses shall be deposited with some depositary designated by the company and approved by the commissioner of corporations, and that, prior to the expenditure of any of said funds, a statement of the purpose of such proposed expenditure shall be filed with and first approved by said commissioner, and no expenditure of any of said funds shall be made for purposes other than stated by the company, so filed with the commissioner and so approved by him.

§ 430. Order Denying Application.

In the matter of the application of
W. K. EPHRAIM, as Secretary of SIERRA AMALGAMATED MINES
COMPANY,
for a certificate or permit authorizing said company to issue shares of its
capital stock.

The application of W. K. Ephraim, as secretary of Sierra Amalgamated Mines Company, a corporation, is for authority to issue 500,000 shares of the capital stock of said company to himself or his order, in payment of promissory notes aggregating \$50,000, executed prior to the date of such

application, by said company to said Ephraim in consideration of the transfer to it of certain mining locations.

When the application was filed William J. Nixon, of Oakland, claiming to be a party in interest, promptly entered a protest against favorable consideration without a full hearing and investigation.

Nixon alleged that he was the original locator of certain of the mining claims described in the application, and had conveyed them to Ephraim and one A. Andrews, subject to an agreement in writing to the effect that Ephraim and Andrews should provide necessary funds up to the amount of \$10,000 to develop said claims, and that Nixon should receive 50 per cent of any stock of a corporation to be formed that should be issued to Ephraim and Andrews in payment or part payment for said claims.

Nixon asserted his belief that Ephraim was not acting in good faith and did not intend to carry out said agreement, basing his conclusions upon the following alleged facts, among others:

That Ephraim in the preliminary organization of the proposed corporation included Nixon and a nominee of Nixon as incorporators and directors, and then abandoned this organization and formed Sierra Amalgamated Mines Company, eliminating Nixon and his nominee from the new organization;

That Ephraim had evaded him and refused to discuss his purposes with Nixon;

That he had discovered subsequent to the execution of the agreement that Ephraim was dishonest and financially irresponsible, and

That Ephraim's application to the state corporation department made no mention of the agreement with Nixon and sought authority to issue shares not directly in payment for said claims but in payment of certain promissory notes executed by the corporation to Ephraim.

Ephraim and his attorney were forthwith notified of Nixon's representations and were advised that the application would be given a hearing at any time convenient to them.

Ephraim, while demanding that his application be granted, refused and failed to appear at a hearing of the matter. He has also refused and failed to produce certain of the company's records for inspection by a representative of this department.

Ephraim's attitude does not indicate an honest purpose. If it were his intention to deal fairly with his associates he has neglected the opportunity to demonstrate the fact. If it were not his intention to carry out the terms of his written agreement with Nixon the conclusion must be reached, in the absence of any explanation, that a corporation controlled by Ephraim can not be relied upon to deal fairly and honestly with others who might become associated with him through purchase of its shares.

Ephraim's evident determination to withhold from the commissioner other essential facts concerning the corporation is persuasive of the same conclusion.

It also appears:

That Ephraim's application does not conform to the requirements of the Corporate Securities Act in that it is made by Ephraim as secretary and not by the company;

That no evidence has been presented that Ephraim was authorized to make such application on behalf of the corporation;

That no showing has been made that the mining claims acquired by the company were worth \$50,000 or any sum;

That no showing has been made of the plan for development of said claims or the amount of money necessary to prospect them and determine their value; and

That the charter of the corporation has been suspended through its failure to pay state taxes and it therefore has no power to issue shares or to transact other corporate business.

For all of the reasons herein recited the application is denied. Let notice of this decision be given to applicant.

Dated: May 24, 1926.

(Seal)

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Commissioner of Corporations.

§ 431. Provision for Deposit of Secret Formula.

That prior to the issuance of any of said shares said W. H. Litchfield shall first duly execute and deliver to said company his agreement in writing wherein and whereby he shall in effect agree that he will not hereafter divulge to any person other than a duly authorized representative of said company (except with its consent) the secret of said formula, or of the process by which it is used, and that upon breach of said agreement, he will pay to said company as liquidated damages for such injury, a sum equal to the aggregate par value of the shares of stock issued to him therefor; and the said Litchfield shall further execute a separate writing, verified under oath by him, in which said formula and process shall be fully and accurately stated and described in such form and detail that without information other than that stated in such writing, said preparations may be perfectly manufactured or compounded in accordance with said formula by following the process as therein described; which writing, so executed, shall be deposited in a sealed envelope with the commissioner of corporations, or with some depositary designated by said party first above mentioned and said company, and approved by said commissioner, to be held as an escrow subject to the order of said commissioner that the same be delivered to said company or its duly authorized representative whenever it shall appear to said commissioner that such delivery is necessary or expedient for the protection of said company or those interested therein.

§ 432. Permit to Issue Stock and Notes.

In the matter of the application of
HOME SERVICE COMPANY
for a certificate authorizing it to sell its securities.

Home Service Company, a Nevada corporation, has an authorized capital stock issue of \$5,000,000, divided into 50,000 shares having a par value of \$100 each, of which 20,000 shares are first preferred, 10,000 shares are second preferred and 20,000 shares are common stock.

The holders of said first preferred stock shall be entitled to the following preference:

(a) A cumulative annual dividend at the rate of, but limited to, 8 per cent per annum of the par value thereof, payable from the surplus or net profits arising from the business of said corporation, before any dividends shall be set apart for or paid to the holders of said second preferred or common stock.

(b) In the event of the dissolution or liquidation of the corporation's affairs, to the payment of the par value of said shares together with any unpaid and accrued dividends out of any of its assets, prior to the payment and distribution of any of said assets to the holders of said second preferred or common stock.

The nature and extent of the preference to which the holders of said second preferred shares shall be entitled are as follows:

(a) A cumulative annual dividend at the rate of, but limited to, 8 per cent per annum of the par value thereof, payable out of any remaining surplus or net profits arising from the business of the corporation, before any dividends shall be paid to, or set apart for the holders of said common shares, and whenever all dividends, as hereinbefore recited, shall have been paid to or set apart for the holders of said first preferred shares.

(b) In the event of the dissolution or liquidation of the corporation's affairs, to the payment of the par value of said shares together with any unpaid and accrued dividends out of any of its assets before any payment or distribution of said assets shall be made to the holders of said common shares, and whenever the par value, together with any unpaid and accrued dividends shall have been paid to the holders of said first preferred shares.

The holders of said common shares shall be entitled to receive all dividends payable out of the surplus or net profits arising from the business of said corporation after all dividends, as hereinbefore recited, shall have been paid to the holders of said first and second preferred shares, and in the event of the dissolution or liquidation of the corporation's affairs, the holders of said common shares shall be entitled to receive all of the assets of the corporation remaining after the holders of said first and second preferred shares shall have been paid a sum equal to the par value of said first and second preferred shares, together with any unpaid and accrued dividends.

The voting power of said shares, except on questions involving the amendment of said applicant's articles of incorporation, is vested exclu-

sively in the holders of said common stock, provided, however, that if at any time there shall remain unpaid six quarterly dividends on said first and second preferred stock, then and in that event, the voting power shall be vested exclusively in the holders of said first and second preferred stock, and shall so remain until all unpaid and accrued dividends on said first and second preferred stock shall have been paid, and surplus or net profits shall have accumulated in an amount sufficient to pay dividends on said first and second preferred stock then outstanding for the further period of one year.

Said corporation was organized by the managing officers and directors of the Empire Laundry Company, the Diamond Laundry Corporation and the New Method Co-operative Laundry Company, all of which are California corporations, for the purpose of acquiring the property, assets and good will of these companies in exchange for shares of stock as hereinafter authorized.

The assets of the Empire Laundry Company are alleged to be of the value of \$364,774.68, subject to liabilities of \$74,189.92, in exchange for which said applicant proposes to issue \$191,000 par value of its first preferred stock, \$101,400 par value of its second preferred stock and \$333,330 par value of its common stock.

The assets of the Diamond Laundry Corporation are alleged to be of the value of \$605,635, subject to liabilities of \$294,174.59. Said assets are to be transferred to said applicant subject to said liabilities, but are not to be assumed by said applicant. In exchange for said property, said applicant proposes to issue to said corporation \$405,200 par value of its first preferred stock, \$197,000 par value of its second preferred stock and \$333,330 par value of its common stock.

In order to protect itself against possible loss of said assets due to the failure on the part of said Diamond Laundry Corporation to pay said liabilities, said applicant proposes to hold in trust for said Diamond Laundry Corporation \$294,100 par value of said first preferred stock to be sold either by it or said Diamond Laundry Corporation, and the proceeds derived therefrom to be used to pay said liabilities.

Said applicant alleges that it is of the opinion that said preferred shares can not be sold by said Diamond Laundry Corporation at a price greater than 90 per cent of the par value thereof, on which account it has also agreed to issue to said Diamond Laundry Corporation \$29,400 par value of its preferred stock, if said preferred shares are sold at a discount equal to 10 per cent of its par value.

The assets of the New Method Co-operative Laundry Company are now owned by one William H. Cook, and are alleged to be of the value of \$452,476, and subject to liabilities of \$144,136, in exchange for which it proposes to issue to said Cook \$176,400 par value of its first preferred stock and \$136,700 par value of its common stock.

The total value of the assets to be acquired by said applicant is \$1,422,885.68, subject to liabilities of \$511,500.51 in exchange for which it proposes to issue at present \$1,207,700 par value of its first and second

preferred shares and \$999,900 par value of common shares, and in addition thereto \$29,400 par value of its first preferred shares to said Diamond Laundry Corporation upon the conditions and for the considerations as hereinbefore recited.

Said applicant also proposes to issue \$10,000 par value of its first preferred shares and \$2500 par value of its second preferred shares to Ingall W. Bull and Bayly Brothers in consideration of services heretofore rendered.

\$150,000 of the \$217,532.92 liabilities to be assumed by said applicant consist of the following:

A mortgage of the property of the Empire Laundry Company securing the payment of	\$ 20,000
A mortgage of the property of the New Method Co-operative Laundry Company, securing the payment of	30,000
Cash which said applicant has agreed to pay to William H. Cook as the balance of the purchase price of said New Method Co-operative Laundry Company's plant	100,000

Said applicant now proposes to pay said indebtedness of \$150,000, and in order to obtain the proceeds with which to accomplish this purpose, proposes to issue 150 first mortgage 7 per cent serial notes of the aggregate par or face value of \$150,000, all to be dated as of May 1, 1926, and to become due and payable on May 1, 1927. Said note issue is to be secured by a mortgage or deed of trust of all of the property and assets of the New Method Co-operative Laundry Company and the Empire Laundry Company, all of which is more particularly described in a copy of said deed of trust filed with and made a part of said application, to which reference is hereby made.

Said applicant also proposes to sell \$230,700 par value of its preferred capital stock to net the company 90 per cent of the selling price thereof and to use the proceeds derived therefrom to pay a part of said note issue when it becomes due and the remainder in acquiring additional laundry plants.

From the evidence submitted with said application, it appears that the net earnings for said plants during the present year will be approximately \$127,000.

The foregoing recitals are based solely upon statements made in said application and the papers filed therewith. No independent investigation has been made by the state corporation department concerning the value of any of the property and assets to be acquired.

Pursuant to its application, said applicant is permitted to sell and issue shares of its capital stock as follows:

1st. To the Empire Laundry Company, a corporation, 1910 shares of its first preferred stock, 1014 shares of its second preferred stock and 3333 shares of its common stock in exchange for all of the property and assets of said company as described in said application, subject to liabilities not exceeding \$73,189.92.

2nd. To the Diamond Laundry Corporation 4052 shares of its first pre-

ferred stock, 1970 shares of its second preferred stock and 3333 shares of its common stock in exchange for all of the property and assets of said corporation, as described in said application, subject to liabilities but not to be assumed by said applicant of \$294,174.59.

3rd. To the Diamond Laundry Corporation 294 shares of its first preferred stock as a bonus for the considerations hereinbefore recited.

4th. To William H. Cook 1764 shares of its first preferred stock, 1367 shares of its second preferred stock and 3333 shares of its common stock in exchange for all of the property and assets heretofore owned by the New Method Co-operative Laundry Company, subject to liabilities not exceeding \$144,136.

5th. To Bayly Brothers 50 shares of its first preferred stock in consideration of services heretofore rendered to said applicant.

6th. To Ingall W. Bull 50 shares of its first preferred stock and 25 shares of its second preferred stock in consideration of legal and other services heretofore rendered to said applicant.

7th. 2307 shares of its first preferred stock at par, for cash, lawful money of the United States, for the uses and purposes recited in said application, and so as to net said applicant not less than 90 per cent of the selling price thereof.

Said applicant is further authorized to sell and issue its first mortgage 7 per cent serial notes, not exceeding in their aggregate par or face value \$150,000 of that certain issue authorized by said applicant to be executed and issued in and by proceedings of its directors and of its stockholders, recited in a certified copy of a certificate of a creation of a bonded indebtedness of said applicant, filed in the office of the secretary of state, state of California, on the 6th day of May, 1926.

This permit is issued upon the following conditions:

(a) That said notes shall be sold only for cash, lawful money of the United States, for the uses and purposes recited in said application and so as to net said applicant the full par or face value thereof, plus an amount equal to the interest accrued thereon and remaining unpaid at the time of such sale.

(b) That said notes, when issued, shall be secured by an indenture of trust or mortgage substantially in the form of a draft thereof filed with said application, and shall be substantially in the form of the note in said indenture recited and shall be executed, certified and issued only in accordance with the provisions of said indenture.

(c) That prior to the certification or issuing of any of said notes, said indenture shall be first duly executed as a deed or deed of trust, as a mortgage of real property and as a mortgage of personal property, and as so executed shall be duly recorded in the office of the county recorder of the county of Los Angeles, state of California, as a deed, as a mortgage of real property and as a mortgage of personal property and as so executed and recorded shall be a first lien and charge of record upon all of the real and personal property therein described, subject only to any taxes or

assessments constituting a lien thereon, the payment of which shall not then be delinquent.

(d) That all of said common shares, when issued, shall be forthwith deposited with the commissioner of corporations or with a depository to be selected by said certificate holders and approved by said commissioner, to be held as an escrow pending the further order of the commissioner of corporations, and the receipt of such depository (if other than said commissioner), for such certificates shall be filed with said commissioner, and that while said certificates shall be so held, the holders of the shares evidenced thereby shall not sell or offer for sale, or otherwise transfer, or agree to sell or transfer such shares, without the consent of said commissioner shall have been first obtained in writing so to do.

(e) That 2941 shares of said first preferred stock, authorized to be issued to said Diamond Laundry Corporation shall be by said applicant held as an escrow, subject to the express condition in writing that said shares may be sold by said Diamond Laundry Corporation for cash, lawful money of the United States and so as to net said Diamond Laundry Corporation not less than 90 per cent of the par value thereof, and that the proceeds derived from the sale of said first preferred shares shall be used for the payment of the indebtedness hereinbefore mentioned.

This permit is issued upon the condition that a true copy thereof be exhibited and delivered to each prospective subscriber for or purchaser of said securities before his subscription therefor shall be taken or any sale thereof made to him.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: May 8, 1926.

(Seal) Commissioner of Corporations.

§ 433. Order Denying Application.

In the matter of the application of
DALTON IRON WORKS

for a certificate authorizing it to sell its securities.

Prior to the incorporation of Dalton Iron Works, applicant herein, Henry Dalton and R. P. Kavanagh, its organizers, presented to the state corporation department a general statement of their plans and purposes substantially as follows:

That they desired to form a corporation to take over the iron foundry operated at Oakland, Cal., by Henry Dalton & Sons Co., and with it certain materials and equipment of an oil engine manufacturing plant located at Trinidad, Colorado, the purpose being to combine the two plants and go into the business of manufacturing engines and tractors;

That the physical value of the foundry property including site, buildings and equipment, was not less than \$150,000, the value of the real property alone being \$100,000;

That said foundry business had a substantial good will value estimated at \$250,000, based upon the alleged fact that it was regularly earning net annual profits of approximately \$30,000;

That said engine manufacturing plant had cost Henry Dalton & Sons Co. \$188,000 and had an estimated value of \$225,000.

Applicant corporation was thereafter organized at the suggestion of the state corporation department, with an authorized capital stock of \$500,000, divided into 5000 shares of the par value of \$100 each, of which half is common stock and half 8 per cent cumulative and participating preferred.

Its application is for authority—

(a) To issue all of its common stock in part payment for said foundry property and said engine plant and equipment, and

(b) To sell \$125,000 of its preferred stock to the public for cash, the proceeds to be used to consolidate the two plants and carry on the business.

The balance of the purchase price of said properties, payable to Henry Dalton & Sons Co., either in money or preferred stock at the option of the vendor, was to be the sum of \$125,000, the indebtedness to be evidenced by a note, secured by a trust deed, conveying all of the property and equipment.

Notwithstanding their repeated assertions as to the earnings of the foundry, upon which the suggestions as to form of organization were largely predicated, Dalton and Kavanagh have failed and refused to furnish any evidence to substantiate their statements that the business had been operated at a profit of \$30,000 a year, or that it has been or is being operated at any profit whatever.

An independent investigation conducted by the department does not support the valuation of \$100,000 placed upon the 5-acre site of the Dalton foundry, or the valuation variously estimated at \$162,750 and \$225,000 placed by Dalton and Kavanagh on the engine plant.

Applicant has also failed, although requested to do so, to furnish a copy of any patent or patents, certain rights to which are alleged to have been acquired with the engine plant and equipment, or to furnish a copy of the assignment of such rights and a bill of sale or other evidence to support its allegations as to the character and value of the patent rights and property, variously declared to have represented an investment by Dalton & Sons Co. of from \$160,000 to \$188,000.

It is a fair presumption that representations similar to those made to the department would be made to prospective investors, leading them to believe that their investment would be adequately secured by the earnings of a going business, sufficient to meet dividend requirements and to build up a surplus to speedily liquidate indebtedness incurred on account of the purchase price, and that the assets of the enterprise would be worth a sum largely in excess of their apparent actual value.

Applicant and its organizers have exhibited a lack of frankness with the department, and an evident desire to conceal facts necessary to a proper determination of values, to an extent that casts serious doubt upon their

purpose to deal fairly with the investor. Until statements made to and filed with the department are reasonably demonstrated to be true, the application will be denied.

Let notice of this decision be given to the applicant.

Dated: November 24, 1926.

(Seal)

.....
Commissioner of Corporations.

CHAPTER XXVII.

SUBSCRIPTIONS TO STOCK.

- § 434. Subscriptions to Stock After Incorporation.
- § 435. Who May Subscribe for Stock.
- § 436. Subscription Agreements.
- § 437. Essentials of a Valid Subscription.
- § 438. Subscription Payable After Organization.
- § 439. Subscription Agreement Covering Compensation to Promoter.
- § 440. Installment Subscription.
- § 441. Subscription Agreement—Short Form.
- § 442. Subscription List.
- § 443. Receipts for Subscription Money.
- § 444. Receipt by Agent.
- § 445. Taking Stock Without Written Agreement.
- § 446. Receipts and Assignments Thereof Prior to Issuance of Certificates.
- § 447. Installment Certificates.
- § 448. Assignment of Installment Certificate.
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- § 450. Assignment of Receipt for Part Payment.
- § 451. Subscription Payable in Property or Services.
- § 452. Agreement to Exchange Property for Stock.
- § 453. Minute Entry of Ratification of Exchange of Stock for Property.
- § 454. Stock Subscription Agreement for Contract Privilege.
- § 455. Sale of Stock and Bonds for Property.
- § 456. Enforcement of Subscription Contracts.
- § 457. Enforcement of a Subscription Made Prior to Incorporation.
- § 458. Withdrawal or Cancellation of Subscription.
- § 459. Conditional Subscriptions.
- § 460. Subscription With Option to Surrender.
- § 461. Agreement for Sale and Repurchase of Stock.
- § 462. Rescission of the Subscription Contract.
- § 463. Insolvency of Corporation as Precluding Right to Rescind Subscription on Ground of Fraud.
- § 464. Tender on Notice of Rescission.
- § 465. Remedy of the Subscriber.

§ 434. Subscriptions to Stock After Incorporation. — The subject of stock subscriptions prior to incorporation has been discussed. At this point we shall consider the different methods by which subscriptions to stock subsequent to incorporation are secured, and the obligations assumed by the subscribers and the corporation with respect to subscriptions both before and after incorporation.

§ 435. **Who May Subscribe for Stock.**—From the standpoint of the corporation, only policy dictates as to the persons who shall be permitted to subscribe for the capital stock. The power of a corporation to own stock in another corporation has already been discussed. In many states are found constitutional provisions to the effect that the legislature shall not have power to authorize the state, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

§ 436. **Subscription Agreements.**—A stock subscription is a contract between the corporation on one side, and the subscriber on the other, and courts will enforce it for or against either.¹ It is a general rule in most of the states that a subscription for shares of stock does not require an express promise, but implies a promise on the part of the subscriber to pay for them.² Unless a charter of a corporation, or the general law under which it is organized, requires that subscriptions shall be in some particular form, or that they shall be made with certain formalities, no other form or formality is necessary to a valid subscription than is required for any other simple contract.³

§ 437. **Essentials of a Valid Subscription.**—Valid stock subscriptions, as in the case of contracts in general, must be mutual. Both parties must be bound. A mere unilateral subscription without evidence of its acceptance is not enforceable.⁴ In order that a subscription may become binding, it must have been received by some person duly authorized by the corporation, or by one whose act was within a reasonable time ratified.⁵ Where a corporation recognizes a person's act in taking subscriptions to its stock, by re-

¹ *Cattlemen's Trust Co. v. Swearingen* (Tex. Civ. App.), 200 S. W. 596.

² *John W. Cooney Co. v. Arlington Hotel Co.*, 11 Del. Ch. 430, 106 Atl. 39, 7 A. L. R. 955; *German Mercantile Co. v. Wanner*, 25 N. D. 479, 142 N. W. 463, 52 L. R. A. (N. S.) 543n.

³ *Dupee v. Chicago Horse Shoe Co.*, 117 Fed. 40.

⁴ *Parker v. Northern C. M. R. Co.*, 33 Mich. 23; *Glenn v. Garth*, 133 N. Y. 18, 30 N. E. 649, 31 N. E. 344.

⁵ *Essex Turnpike Corp. v. Collins*, 8 Mass. 292; *Schurtz v. Schoolcraft, etc.*, R. Co., 9 Mich. 270; *Walker v. Mobile, etc.*, R. Co., 34 Miss. 245; *Judah v. American Live Stock Ins. Co.*, 4 Ind. 333; *Buffalo, etc.*, R. Co. v. *Gifford*, 87 N. Y. 294.

ceiving and registering such subscriptions, this amounts to a previous appointment of such person as an agent for that purpose.⁶

While the strict definition of the word "subscribe" or "subscription" involves the idea of a written signature, yet by common usage it is often employed to include an agreement, written or oral, to give or pay some amount to a designated purpose, more usually, perhaps, to some purpose for the promotion of which numerous persons are uniting their means and their efforts. Accordingly oral subscriptions have been sustained as a rule,⁷ although there is authority looking the other way.⁸ But where the general law or the corporate charter requires a subscription contract to be in writing, it is generally conceded that a parol subscription is invalid.⁹ No particular form is necessary so long as the intent to subscribe and the acceptance of the offer are made apparent.¹⁰

Where a prospectus sets forth the objects of the proposed corporation and a general outline of its organization, those who append their names thereto followed by respective numbers of shares, thereby constitute themselves subscribers.¹¹ Even an immaterial departure from a form prescribed by statute¹² or the articles¹³ of incorporation is not vital.

§ 438. Subscription Payable After Organization.—The subscription agreement may call for payment of the total price of the stock at one time, either on a certain date or at a certain stage of the organization of the corporation. In the following form payment is due upon organization:

⁶ Taggart v. Western Maryland R. Co., 24 Md. 563, 89 A. D. 760; Cattlemen's Trust Co. v. Swearingen (Tex. Civ. App.), 200 S. W. 596.

⁷ Rutenbeck v. Hohn, 143 Ia. 13, 121 N. W. 698, 136 A. S. R. 731; Panhandle Packing Co. v. Stringfellow (Tex. Civ. App.), 180 S. W. 145.

⁸ Fanning v. Hibernia Ins. Co., 37 Ohio St. 339, 41 A. R. 517; Weston v. Dahl, 162 Wis. 32, 155 N. W. 949, A. C. 1918C 922.

⁹ Vreeland v. N. J. Stone Co., 29 N. J. Eq. (2 Stew.) 188.

¹⁰ Lohman v. N. Y., etc., R. Co., 2 Sandf. (N. Y.) 39; Ottawa, etc., R. Co. v. Black, 79 Ill. 262.

¹¹ Auburn Opera, etc., Assoc. v. Hill, 113 Cal. 382, 45 Pac. 695, 3 Cal. Unrep. 839, 32 Pac. 597.

¹² Stuart v. Valley R. Co., 32 Gratt. (Va.) 146.

¹³ Fisher v. Evansville, etc., R. Co., 7 Ind. 407.

NEW ERA PRINTING COMPANY.

Incorporated under the laws of the State of

Capital Stock, \$100,000.

Divided into 1,000 shares of \$100 each.

We, the undersigned, hereby severally agree to take and pay for at par the number of shares of the capital stock of the New Era Printing Company set opposite our respective names. Payment to be made on demand of the treasurer, or upon notice from the secretary after organization. This January 15, 1926.

Names.	Addresses.	Shares.	Amount.
E. P. Jones.....	Washington, D. C.....	10	\$1,000
M. L. Bennett.....	Washington, D. C.....	25	2,500

The subscription agreement frequently, however, calls for the payment of the price of the stock in installments either on certain dates or upon the happening of certain events. The following agreement entered into prior to incorporation makes the first installment fall due upon incorporation and the second or remaining installments upon the call of the board of directors:

§ 439. Subscription Agreement Covering Compensation to Promoter.

NEW ERA PRINTING COMPANY.

Incorporated under the laws of the State of

Capital Stock, \$100,000.

Divided into 1,000 shares of \$100 each.

We, the undersigned, severally agree to take and pay for at par value the number of shares of the capital stock of the New Era Printing Company set opposite our respective names. Payment to be made as follows: Ten per cent upon executing and delivering this agreement to William Hopkins, agent and promoter of said company; the same, or so much thereof as may be necessary to be expended by him in promoting said company, that is to say, in procuring other subscriptions and to cover expenses of incorporating said company; forty per cent upon notice of the due incorporation and organization of said company to its treasurer, and the balance at once or in installments upon demand or call from the board of directors.

Dated March 1, 1926.

Names.	Addresses.	Shares.	Amount.
Robert Forbes	Washington, D. C.....	20	\$2,000
Sam'l Smith	Washington, D. C.....	15	1,500

The following is a straight installment subscription agreement:

§ 440. Installment Subscription.

Whereas, Crescent Elevator Company is a corporation organized and existing under and by virtue of the laws of the state of with a capital stock of dollars (\$.....), divided into (.....) shares of the par value of dollars (\$.....) each.

Now, therefore, we the undersigned, do hereby subscribe for the number of shares of said capital stock and in the amounts below respectively set opposite our names, and we do hereby promise, to and with each other, in consideration of the mutual promises and agreements herein contained, to pay for the same to the officer of the company thereto authorized, in gold coin of the United States, said amounts and in the manner and at the times hereinafter stated:

Twenty-five per cent (25%) of the par value of said stock so subscribed for by us when subscriptions for stock of the par value of fifty thousand dollars (\$50,000) have been received.

A further twenty-five per cent (25%) of the par value of said stock sixty (60) days after the said first payment.

A further twenty-five per cent (25%) of the total par value of said stock one hundred twenty (120) days after said first payment.

A further twenty-five per cent (25%) of the total par value of said stock, one hundred eighty (180) days after said first payment.

We further agree, in consideration as aforesaid, that said payments shall be made without demand and for the use and benefit of said Crescent Elevator Company, a corporation, as aforesaid, and that certificates of stock for the number of shares so subscribed for by us shall be issued to us respectively, upon full payment of the amounts herein agreed upon.

Witness our hands, this day of March, 1926.

Names.	Number of Shares.	Amounts.
.....

§ 441. Subscription Agreement—Short Form.

We, the undersigned, hereby agree to form a corporation under the laws of the state of California to be known as the Title Insurance Company for the purpose of conducting a title insurance business, the capital of which corporation is to be two hundred fifty thousand dollars (\$250,000) divided into two thousand five hundred (2500) shares of the par value of one hundred dollars (\$100) each.

As soon as the corporation is formed, each of us, the undersigned, agrees to pay to the secretary of the said corporation at his office in without demand, ten per cent (10%) of the par value of the stock subscribed by us, as set opposite our respective names, and the balance when called upon, until the amount subscribed is fully paid.

Provided, however, that this subscription shall become absolute and binding only when subscriptions shall have been entered into of the tenor

and effect of this subscription for the payment of an aggregate amount of one hundred thousand dollars (\$100,000) and involving the delivery to the subscribers of one hundred thousand dollars (\$100,000) of stock of the said corporation.

Subject to the above condition, we hereby subscribe for the number of shares of said stock set opposite our respective names for which we agree to pay the amounts set opposite such numbers.

Witness our hands this day of, 1926.

Subscriber. Shares. Amount. Address.

.....

§ 442. Subscription List.

Be It Remembered, That on this day of, 19..., the Company of, being now duly incorporated under the laws of said state by its trustees, did, under and by virtue of the power and authority conferred so to do by said laws and articles of incorporation, and hereby does open a subscription list and call for subscriptions to the capital stock of said corporation, which capital stock consists of twenty-five thousand shares of the par value of one dollar per share.

Subscriptions to the said stock are payable upon call, on twenty days' notice issued by the board of directors, and no certificates of stock shall be issued until the same are fully paid for at par, provided any subscriber or his assignee may have certificates of stock issued for any portion of his subscription that shall have been fully paid for at par.

We, the undersigned, each for himself, hereby subscribe to the capital stock of the said corporation, subject to the above conditions, and agree to pay for the number of shares of said stock set opposite our respective names, in consideration for certificates of shares of said stock duly issued and delivered to me or my order upon the same and to the extent that this subscription has been fully paid for at par, to wit:

Name.	No. of Shares.
Martin L. Bergman, six thousand five hundred.....	6500
C. A. Johnson, twenty-three hundred thirty-five.....	2335
John H. Evans, six thousand five hundred.....	6500
Jno. A. Hurd, six thousand.....	6000
John T. Davie, two thousand.....	2000
Peter Erickson, sixteen hundred sixty-five.....	1665

§ 443. Receipts for Subscription Money.—If certificates are ready to be issued when subscriptions are paid, a simple, ordinary receipt from the treasurer, or other person authorized to accept payment, will suffice. This receipt will, upon presentation to the secretary, warrant him in issuing and delivering the certificate. But often payments are made before certificates in blank form have been printed. In that case the following form will suffice:

Receipt for Payment Prior to Printing of Certificate.

No..... 10 Shares. Amount, \$1,000. Name, E. P. Jones. Date, April 10, 1926.	No..... 10 Shares. THE NEW ERA PRINTING COMPANY. JAMES KNOX, Treasurer. \$1,000. Received from E. P. Jones the sum of one thousand dollars, in full for ten shares of the capital stock of the New Era Printing Company; and I hereby certify that he is entitled to receive a certificate duly executed for ten full paid shares upon the surrender of this receipt to the secretary when certificates have been printed and are ready for delivery. This April 10, 1926. JAMES KNOX, Treasurer.
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Upon part payment of the amount specified to an agent, trustee, or promoter upon a subscription agreement providing therefor, the receipt may be in the following form:

§ 444. Receipt by Agent.

No..... 20 Shares. Amount, \$200. Name, Robert Forbes. Date, March 1, 1926.	No..... 20 Shares. THE NEW ERA PRINTING COMPANY. WILLIAM HOPKINS, Agent (Promoter or Trustee). \$200. Received from Robert Forbes the sum of two hundred dollars, the same being ten per cent of his subscription for twenty shares of the capital stock of the New Era Printing Company; said payment being made to me according to the terms and conditions of his subscription. This receipt is to be accepted by the treasurer of said company, when organized, to the full amount thereof, upon the subscription of the said Robert Forbes. This the 1st day of March, 1926. WILLIAM HOPKINS, Agent (Promoter or Trustee).
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§ 445. Taking Stock Without Written Agreement.—After incorporation, subscription agreements are frequently dispensed with. The purchaser of shares simply pays part or all of the agreed price and receives his certificate, or gives his promissory note for the same. The statutes of some of the states, however, require payment in cash of at least a percentage of the par value of the stock. If it be expected that shares will be taken by many persons, it would be well for the corporate officers to have applications printed in blank. The following is a convenient form:

Application for Stock.

NEW ERA PRINTING COMPANY,

10 Printing House Square,

Washington, D. C.

Capital Stock \$1,000,000.

Shares \$100 each.

Enclosed find my check for \$. in payment for shares of the stock of the New Era Printing Company.

Certificates to be issued and delivered to

City (or Town) of

State of

Dated, 1926.

Checks drawn to pay for stock should be made payable to the company. In filling above blank, give name in full. Right to reject or pro rate subscriptions is hereby reserved.

The check and the treasurer's receipt for money paid for preferred stock are the same as in the case of common stock, except that the word "preferred" is placed before "shares" and "stock" wherever they appear.

§ 446. Receipt and Assignments Thereof Prior to Issuance of Certificates.—The treasurer's receipts, if many are to be used, may be printed and bound in covers, with a perforated line between the stub and the receipt. The entries on the stub provide a complete record, from which the treasurer makes up his permanent accounts. The treasurer's receipts, being a substitute for, and evidence of title to, the certificates may be assigned. A blank assignment may be printed on the stock, thus:

Assignment of Receipt.

For a valuable consideration, I hereby assign and transfer to, of the city (or county) of, state of, the within receipt and the payments for which it was given, and hereby authorize and direct the secretary of the New Era Printing Company to issue to the order of said, in my place and stead, the shares of stock of said company called for by the within receipt and for which the payments mentioned therein were made.

.....

Washington, D. C., May 1, 1926.

The assignment may be witnessed or acknowledged before a notary.

§ 447. Installment Certificates.—Sometimes there is considerable delay in having satisfactory certificates engraved and printed; and in such case, it may be important that these receipts, being the equivalents of certificates, be attached. It may be desirable to have them lithographed and printed upon a good quality of paper, and to have them signed by the president and secretary as well as the treasurer. In some instances such receipts have continued in use for considerable periods, and been dealt in extensively in stock exchanges, prior to being exchanged for certificates.

Under these circumstances the wording is so changed as to make the instrument resemble a certificate more than a treasurer's receipt. In the case of a corporate enterprise which immediately becomes a pronounced success and at once realizes or gives promise of realizing large profits, these receipts may command a price in the market in excess of par value, though only part paid. They are commonly designated "Installment Certificates," and may be in the following form:

Installment Certificate.

No.....

10 Shares.

THE NEW ERA PRINTING COMPANY.

Washington, D. C., March 1, 1926.

\$500.

No.....

Shares 10.

Payment,

Cash, \$500.

Name,

E. P. Jones.

Date,

April 10, 1926.

The undersigned officers of the New Era Printing Company, being duly authorized thereto by the law, and the by-laws and resolutions of its board of directors, so providing, hereby certify that E. P. Jones, a subscriber for ten shares of the capital stock of said corporation, at the par value of \$100 each, has paid into the treasury of said corporation, on account of said subscription, and according to the terms thereof fifty dollars per share in cash. Upon payment of the remaining installments of said subscription, and surrender of this instrument, accompanied by vouchers showing payment of the remaining installments of said subscription, regular and duly executed certificates for said ten shares of stock, will be issued to the order of the said E. P. Jones, subscriber.

JAMES WILLARD, President.

JAMES KNOX, Treasurer.

J. F. WESTON, Secretary.

§ 448. Assignment of Installment Certificate.—These receipts should also have printed on their backs an assignment adapted to this special form of receipt. It may be in the following form:

For a valuable consideration, receipt of which is hereby admitted, I hereby assign and transfer to, of the city (or county) of, state of, my title to all shares which I have a right to demand and receive from the New Era Printing Company, a corporation, evidenced by my subscription therefor in connection with the within receipt and endorsements of payment endorsed below, on the back thereof, the same being ten shares; and I hereby direct and authorize the secretary of said company, upon complete payment therefor, and performance of any other conditions specified in my said subscription, to issue a certificate, in due and regular form, to the said, or to his order.

Washington, D. C., May 1, 1926.

(Signed)

§ 449. Credit of Payment on Installment Certificate.—But after one of these is issued to a subscriber, it will not be necessary to issue a new one every time an installment upon the subscription

is paid; but there should be an additional blank in which the payments should be credited as they are made thus:

Date	Number of Installment	When Due	Amount	Signature of Treasurer
March 15	1	March 15, 1926	\$2.50	James Knox
April 15	2	April 15, 1926	2.50	James Knox
June 15	3	June 15, 1926	2.50	James Knox

The stubs of treasurer's receipts having this form upon the back should also contain it, omitting the space for the treasurer's signature. As the entries on the stub are made in regular course of book-keeping, his signature would add nothing to their evidentiary value.

§ 450. Assignment of Receipt for Part Payment.—But the agreement between the subscriber and his assignee may bind the former to complete the payments still due upon the stock for the latter's benefit. In that case, either the assignee should present the treasurer's receipt when a payment has been made, and have the proper credit endorsed on the back (see form), or the subscriber should obtain a separate receipt, simple in form, and assign it to the assignee. The latter may then have the proper endorsement made at his convenience, or merely keep the receipt and assignment as evidence. Such assignment may be in this form:

For a valuable consideration to me paid, I hereby assign and transfer the within receipt and payment to Robert Finn; together with all interest created or acquired by the payment which it evidences.

Washington, D. C., May 1, 1926.

E. P. JONES.

It is important to distinguish, however, between an assignment of a mere treasurer's receipt and an assignment of the more formal instrument shown by the above form, and signed by the officers whose duty it is to sign regular certificates. No contractual relation exists between the corporation and the assignee of shares of the corporation where no certificate has been issued, and no transfer has been made on the books. The assignee's rights are of a purely equitable character, as a beneficiary of the assignor, and his only remedy, if the corporation should subsequently refuse to recognize his right to a certificate would be equitable, for the protection of his equitable rights.¹⁴ But where there is no statute prohibiting the issuance of certificates prior to full payment, the more formal instrument signed by the proper officers would no doubt be treated as a certificate, especially if authorized by a by-law provision.

¹⁴ *Mechanics' Bank v. Seton*, 1 Pet. (U. S.) 299, 7 L. Ed. 152.

§ 451. Subscription Payable in Property or Services.—It has been previously stated that the stockholders may agree among themselves as to the payment for shares in property, or services, or as to other terms upon which stock may be issued. It was also stated that the directors may accept property or services for stock. The stockholders may also mutually agree among themselves for a distribution of all or part of the stock. Such agreements should be in writing, and, if possible, signed by all the incorporators before any certificates are issued. The advantage of the mutual agreement over the action by directors consists in the fact that any dissenting shareholder may question the adequacy of the consideration, or the good faith of the parties to the transaction, when in the latter form, whereas, if done by unanimous agreement among the incorporators before the issuance of any certificates, and before any indebtedness has been contracted, the matter becomes conclusive upon the corporation, all those at the time interested, and all who may afterwards become stockholders or creditors.

§ 452. Agreement to Exchange Property for Stock.

This agreement, made the 22d day of May, 1926, by and between B. L. Finch, J. F. Cross and John D. Marcum, all of the county of, state of, the parties hereto witnesseth:

That for and in consideration of the sum of one dollar in lawful coin of the United States, respectively paid by the parties hereto, and the covenants mutually made herein, to be kept and performed by the several parties hereto, the said Finch, Cross and Marcum, their heirs and assigns, do agree as follows to wit:

1. Whereas, The said B. L. Finch is the discoverer and proprietor of a cough mixture, the name of which is copyrighted as "Excelsior"; also of an ointment for the cure of rheumatism, which he proposes to copyright, both of which medicines and complete formulae of compounding and preparing is known only to said Finch; and also certain other medicines, and medicines manufactured from and containing health-giving properties, and certain formulae, drawings, cuts, and means of advertising said medicines.

2. Whereas, Said John D. Marcum is the proprietor of 160 acres of land located in Sections 28 and 21, Twp. 26 N., R. 5 E., M. D. M., patented, on which said lands are quantitles of the raw material for the manufacture of said medicines; also a distillery, condenser with all tools, barrels, appertaining thereto, situated on Section 21, Twp. 26 N., R. 5 E., M. D. M.; and has made application for the right to use sufficient water where the distillery is now situated, for the purpose of operating the same, and the right

to cut wood from said land and right of way thence, and also has applied for and is about to obtain title to the following described lands, to wit:

(Here insert description.)

3. Whereas, The said J. F. Cross is, or is about to become, the proprietor of certain other similar lands, described as follows:

(Here insert description.)

4. Whereas, The above-named persons have caused to be formed a corporation known as the Excelsior Medical Company;

5. Whereas, All the above-named property is required for the business of said corporation in manufacturing and selling said medicines;

Now, Therefore, The said B. L. Finch, on his part, for and in consideration of 12,750 shares of the full paid capital stock of the Excelsior Medical Company, and the further sum of \$1,000 cash, hereby agrees to sell, transfer, remise, relinquish and assign to said Excelsior Medical Company all his rights, privileges, franchises, and emoluments of every name and character in the properties, distilleries, formulae, etc., in section numbered "1" of this agreement above mentioned.

And the said John D. Marcum, on his part, for and in consideration of the number of five thousand shares of the capital stock of the Excelsior Medical Company, full paid, hereby agrees to sell and convey to the said company the property mentioned and set out in the section of this agreement numbered "2"; that is to say, the title to the patented land, in said section described, is to remain in said Marcum, but all rights and privileges connected with said land and trees necessary and convenient for the purposes of the company in extracting medicinal properties, and the distillery and condenser, now on the grounds, right of way and water rights, go to said company.

And the said J. F. Cross, on his part, hereby agrees that for and in consideration of 12,750 shares of the full paid stock of the Excelsior Medical Company, he will sell and guarantee to the said company the property and exclusive right to collect material for the manufacturing of said medicines on the lands in the section of this agreement numbered "3," set out as soon as title thereto can be obtained. The parties hereto are to have reasonable time in which to comply with the agreement herein mentioned, such time to be judged by the requirements of obtaining title and perfecting the same to property, and preparing the books of said corporation.

Witness our hands and seals, this 1st day of May, 1926.

B. L. FINCH, (Seal.)

J. F. CROSS, (Seal.)

JOHN D. MARCUM. (Seal.)

Such a transaction would no doubt be effective without further action other than the issue of the certificates representing the stock. There should be as many originals of the writing as there are parties to it, and an extra original should be filed with the secretary for his protection. But such an agreement should be executed before

the first meeting of the corporation and at such meeting should be formally ratified.

The minute entry of such action may be as follows:

§ 453. Minute Entry of Ratification of Exchange of Stock for Property.

Mr. A. F. Jones then stated to the meeting the conditions of a certain agreement, made the 1st day of May, 1926, transferring the property therein named to the Excelsior Medical Company, which were that the capital stock of the Excelsior Medical Company should be distributed and issued as follows:

12,750 shares of full paid capital stock of said company to B. L. Finch; 12,750 shares of the full paid capital stock of said company to J. F. Cross; and 5,000 shares of the full paid capital stock of said company to John D. Marcum. Whereupon, Mr. C. D. Hoag moved that the capital stock of the Excelsior Medical Company be issued by the secretary, as follows, to wit:

To B. L. Finch, 12,750 shares; to J. F. Cross, 12,750; to John D. Marcum, 5,000 shares, which said motion was voted upon and unanimously adopted.

§ 454. Stock Subscription Agreement for Contract Privilege.

Agreement, made and entered into this 1st day of November, A. D. 1926, by and between Robert Beale, of the city and county of San Francisco, state of California, party of the first part, and the Solano Contracting Company, a corporation organized and doing business under and by virtue of the laws of the state of California, party of the second part, witnesseth:

Whereas, The said Robert Beale has entered into a contract with the county of Mendocino, state of California, through its proper officers, for the construction of certain roadways known as the highways, and to furnish all necessary labor and material therefor as specified in the specifications issued by the county engineer of said county, on the 8th day of July, 1926, for the sum of one hundred and ninety-two thousand dollars (\$192,000);

And Whereas, The said party of the second part is desirous of acting as the agent of the party of the first part in carrying out the said contract and in furnishing the necessary labor and material in connection with said contract and acting as superintendent thereof, but not in any way as the assignee of said contract or as having any interest therein, but solely for the purpose of employment under said party of the first part in the work of constructing said highways as aforesaid.

Now, Therefore, This agreement witnesseth that the said party of the second part in consideration of the premises and of the agreement on the part of the party of the first part, hereinafter contained, to employ the party of the second part as the agent and representative of the party of the first part in carrying out the contract between the party of the first part and the county of Mendocino as aforesaid, agrees to issue to the said

party of the first part four hundred (400) shares of its capital stock, fully paid up.

And the said party of the first part in consideration of the issuance to him of the said four hundred (400) shares of the said capital stock of the party of the second part as aforesaid, agrees to institute, appoint, and employ the said party of the second part as his agent and employee irrevocably in the construction of the said highways hereinabove referred to, and to carry out all of the terms of the contract entered into between the party of the first part and the said county of Mendocino as hereinabove referred to; the said party of the second part to do all things necessary to carry out the said contract and to furnish all necessary labor and material and construct said highways and within the time as specified in said contract and specifications as aforesaid.

And for the services of the said party of the second part in that behalf, the said party of the first part agrees to pay to the said party of the second part the full sum of one hundred and ninety-two thousand dollars (\$192,000), as the same shall be received by the party of the first part from the county of Mendocino for the work aforesaid, according to the terms of the contract aforesaid.

It is further agreed between the parties hereto that the party of the second part shall in carrying out the specifications and the contract aforesaid have full control of said work and of the direction thereof, and of all employees employed by it on the work thereof according to the terms of said contract.

And it is further covenanted and agreed that the said party of the first part shall appoint the treasurer of the party of the second part his agent for the purpose of receiving from the county of Mendocino, in the name of the party of the first part, all moneys due upon the contract aforesaid, and that said treasurer shall act as the agent and representative of the party of the first part in reference to all transactions between the party of the first part and the county of Mendocino in reference to the contract aforesaid.

In Witness Whereof, The respective parties have hereunto affixed their names this 1st day of November, A. D. 1926, in the city and county of San Francisco, state of California.

ROBERT BEALE.

SOLANO CONTRACTING COMPANY,

(Corporate Seal.)

By John Pracy, President.

§ 455. Sale of Stock and Bonds for Property.

Know All Men by These Presents, That we, R. N. Davis & Co., a firm composed of R. N. Davis and E. N. Welch, parties of the first part, and E. R. Tracy, party of the second part, all of Solano County, California, have this day entered into an agreement in duplicate, as follows:

The party of the second part, for the consideration hereinafter mentioned, doth for himself, his executors and administrators, covenant, promise and agree to sell, transfer and deliver to the parties of the first part,

their successors and assigns, all apparatus, franchise rights, privileges, supplies, office fixtures and furniture, and all accessories thereto now used in operating the telephone exchange of the said E. R. Tracy in Dixon, Solano County, California, except the building used for business offices, and all poles, wires, and construction and accessories thereto now on hand, owned and being used by the said Dixon Telephone Exchange in connecting all instruments in and near said town of Dixon, California, which are using Dixon as their switching station, except the toll leads from the edge of town, magneto switch boards, terminal racks and arresters and instruments used and owned by the said E. R. Tracy in connection with said exchange.

The parties of the first part, for and in consideration of the above covenants and agreements, hereby agree and bind themselves, their executors and administrators, to assign, transfer and deliver to the said party of the second part, one hundred thousand dollars in bonds, said bonds drawing six per cent per annum interest, and to be twenty-year gold bonds of the Highway Telephone & Telegraph Co., a corporation duly incorporated under the laws of the state of California, and to be of date not later than October 1st, 1926, and one hundred thousand dollars in shares of the capital stock of the said Highway Telephone & Telegraph Co., interest on the bonds to be paid from the date of turning over the plant, up to and including the date of the bonds by the Highway Telephone & Telegraph Co., to the party of the second part, and further agree to add to the said Dixon Telephone Exchange and apparatus sufficient additions and improvements to make the said telephone exchange a first class one in every respect, and of the latest devices and twelve hundred working telephones; and also to construct and build a modern four-story reinforced concrete building 40x110 feet on the site of the present exchange in said town of Dixon, said building to be used as the exchange building in said town of Dixon by the Highway Telephone & Telegraph Co., unless the board of directors of said Highway Telephone & Telegraph Co. shall at any time for good and sufficient reasons deem it expedient to arrange for other quarters. And for this plant complete, the said parties of the first part are to receive from the said Highway Telephone & Telegraph Co. under a contract to be hereinafter made and entered into, two hundred and twenty-five thousand dollars of the capital stock above described, and two hundred and twenty-five thousand dollars in the above described bonds, which said last amount of bonds will be the full amount of bonds outstanding, of an issue of three hundred and thirty thousand dollars in bonds by the said Highway Telephone & Telegraph Co., leaving a balance of one hundred and five thousand dollars in bonds in the treasury of the said last mentioned company.

The capital stock of the said Highway Telephone & Telegraph Co. is in the sum of five hundred thousand dollars, and after payment of the above mentioned capital stock to the said parties of the first part there will be remaining in the treasury of the said last mentioned corporation one hundred and seventy-five thousand dollars of the capital stock.

It is expressly agreed to and understood that the Highway Telephone &

Telegraph Co. is to give connection to the toll lines belonging to the Dixon Telephone Exchange and the East Bay Telephone Co., their successors and assigns, and to handle the toll business of the said companies at the rate of commission common in the state of California.

It is also agreed and understood that the following officials shall be elected to hold office for the first year: E. R. Tracy, president; E. N. Welch, vice president; R. N. Davis, secretary; L. N. Munson, treasurer, and G. H. Jackson, general manager, these five before mentioned to constitute the board of directors for the first year.

Dated this 21st day of November, 1926, at the city and county of San Francisco, state of California.

R. N. DAVIS & CO.,
By R. N. Davis.
E. R. TRACY.

§ 456. Enforcement of Subscription Contracts.— Various questions may arise as a result of the failure of one party or another to live up to the subscription contract. The corporation may seek to enforce such a contract against the subscriber; the latter may claim his right to the stock subscribed for or sue for damage for the withholding thereof; or creditors may seek to recover from the subscriber unpaid portions of the purchase price.

§ 457. Enforcement of a Subscription Made Prior to Incorporation.—In addition to the customary forms the mere signature to the articles with the amount subscribed will constitute a valid subscription prior to incorporation which may be enforced afterward by the corporation.¹⁵ It is in the enforcement of subscriptions made at this time that the necessity of due acceptance is of great importance. The mutual promises of all of the subscribers is sufficient consideration to support each in a suit for damages against the others for failure to take and pay for their stock. But, in order that the corporation subsequently formed may take advantage of the contract thus made for its benefit, some evidence of its acceptance must affirmatively appear. The acceptance need not take any particular form. The naming of the subscriber in the usual place in the articles as such constitutes an acceptance.¹⁶ In fact, a failure to so name him constitutes a rejection of his subscription;

¹⁵ *Dupee v. Chicago Horse Shoe Co. (C. C. A.)*, 117 Fed. 40; *Phoenix W. Co. v. Badger*, 67 N. Y. 294, 6 Hun (N. Y.) 293; *Cole v. Ryan*, 52 Barb. (N. Y.) 168.

¹⁶ *Marysville, etc., Co. v. Johnson*, 93 Cal. 538, 29 Pac. 126.

and where he has been named for a smaller amount than he originally subscribed, his subscription for the difference is rejected.¹⁷ Where, however, despite the omission of the subscriber's name in the incorporation papers, the subscriber himself makes a part payment and assumes to be a stockholder, he is estopped to claim that the corporation has not accepted his subscription.¹⁸

§ 458. Withdrawal or Cancellation of Subscription.—At any time before an acceptance by the corporation, a subscription may be withdrawn, for, until that time nothing more than an offer has existed.¹⁹ In some jurisdictions it is held, however, that subscriptions to the stock of a proposed corporation may not be withdrawn.²⁰ Where as a result of his subscription and through his connivance, others have been led to subscribe, he may not withdraw to their prejudice.¹ In some states stockholders who are thus injured are compelled to seek relief individually, and not through a suit by the corporation.²

Withdrawal by a subscriber to the stock of an unorganized corporation is effected by notifying the promoter's agent, who secured the subscription of the intention to withdraw and requesting the dropping of the subscriber's name from the subscription paper, which facts are before organization brought to the attention of the subscribers at one of their meetings.³ A subscription to the stock of a proposed corporation is revoked by the death of the subscriber before it is formed.⁴

§ 459. Conditional Subscriptions.—As in the case of contracts in general, a condition named in the subscription must be com-

¹⁷ *Monterey & S. V. R. R. Co. v. Hildreth*, 53 Cal. 123.

¹⁸ *Horseshoe Pier, etc., Co. v. Sibley*, 157 Cal. 442, 108 Pac. 308.

¹⁹ *Cook v. Chittenden*, 25 Fed. 544; *Hudson Real Estate Co. v. Tower*, 161 Mass. 10, 36 N. E. 680, 42 A. S. R. 379; *Strasburg R. Co. v. Echternacht*, 21 Pa. St. 429.

²⁰ A. C. 1916A 700.

¹ *Great Western Tel. Co. v. Haight*, 49 Ill. App. 633.

² *Hudson Real Estate Co. v. Tower*, 161 Mass. 10, 36 N. E. 680, 42 A. S. R. 379.

³ *Bryant's Pond Steam Mill Co. v. Felt*, 87 Me. 234, 32 Atl. 888, 47 A. S. R. 323, 33 L. R. A. 593.

⁴ *Hudson Real Estate Co. v. Tower*, 161 Mass. 10, 36 N. E. 680, 42 A. S. R. 379; *Wallace v. Townsend*, 43 Ohio St. 537, 3 N. E. 601, 54 A. R. 829.

plied with before the subscriber is bound thereby. If the condition be that a certain amount of stock shall be subscribed, the subscriber may withdraw in the event of failure to secure such amount,⁵ or, he may, at his option, demand his stock.⁶

A contract to subscribe for shares in a corporation to be thereafter formed does not become binding or create a liability until all conditions precedent upon which the contract is made have been performed,⁷ or unless performance has been waived.⁸ But conditional subscriptions, when the conditions have been complied with, become binding upon the parties to the same extent as if the contract had been absolute and unconditional.⁹ Conditions, however, which are against public policy will not be recognized.¹⁰

If the preliminary subscription recited that a corporation was to be formed "for the purpose of acquiring and carrying on a general produce and merchandise business," the subscriber cannot be compelled to accept and pay for stock in a corporation whose articles recite that its purpose is "to deal in real estate, bonds, and mortgages."¹¹ An unqualified written obligation to pay a certain sum for stock cannot, in the absence of fraud, be modified by a contemporaneous secret or mere parol agreement.¹² Only substantial performance of a condition is required in order to make the subscription binding.¹³

§ 460. Subscription With Option to Surrender.—Where stock is taken on a contract with the corporation, under the terms of which the subscriber may surrender it within a certain period and recover the par value thereof, the corporation is bound to repurchase the

⁵ Cal. So. Hotel Co. v. Russell, 88 Cal. 280, 26 Pac. 105.

⁶ Santa Cruz R. Co. v. Schwartz, 53 Cal. 106, 110.

⁷ Wisconsin Lumber Co. v. Greene & W. Telephone Co., 127 Iowa 350, 101 N. W. 742, 109 A. S. R. 387, 69 L. R. A. 968.

⁸ Sherrod v. Duffy, 160 Mich. 488, 125 N. W. 366, 136 A. S. R. 451.

⁹ Jackson v. Stockbridge, 29 Tex. 394, 94 A. D. 290.

¹⁰ Lake Ontario Shore R. Co. v. Curtiss, 80 N. Y. 219; Paducah & M. R. Co. v. Parks, 86 Tenn. 554, 560, 8 S. W. 842.

¹¹ Hanford Mercantile Store v. Sowlevere, 11 Cal. App. 261, 104 Pac. 708.

¹² Stone v. Vandalla C. & C. Co., 59 Ill. App. 536; Ollesheimer v. Thompson Mfg. Co., 44 Mo. App. 172.

¹³ Hall v. Sims, 106 Ala. 561, 17 So. 534; Cornell's Appeal, 114 Pa. St. 153, 6 Atl. 258; People v. Holden, 82 Ill. 93; Springfield St. R. Co. v. Sleeper, 121 Mass. 29; Virginia, etc., R. Co. v. Henry, 8 Nev. 168.

stock if offered within the period named. While it is true that a corporation may not impair its capital stock by permitting a cancellation of stock already issued, the stock in this case cannot be said to have been other than conditionally issued in the first instance. The condition must therefore be complied with by the corporation.¹⁴ The weight of authority holds that a contract by a corporation to purchase shares of its own stock will not be enforced by the courts after the corporation has become insolvent.¹⁵

§ 461. Agreement for Sale and Repurchase of Stock.

Whereas, James Bryce, of Millbrae, California, has paid fifteen thousand dollars for fifty thousand shares of the Phoenix Consolidated Mines Company, as evidenced by certificates numbered 203, 204, and 205 issued to him July 7th, 1926; therefore, be it understood, that the undersigned hereby bind itself to return to said James Bryce said fifteen thousand dollars, with interest on the same at the rate of 6 per cent per annum eighteen months after the date hereof, if said James Bryce be not satisfied with the aforesaid investment.

Dated, Dayton, Ohio, this 7th day of July, 1926.

PHOENIX CONSOLIDATED MINES COMPANY,

By John Drew, President.

Attest: THOMAS RANGE,

Secretary.

(Corporate Seal.)

These agreements are regarded as semi-fraudulent in some states.

§ 462. Rescission of the Subscription Contract.—One who has as a result of fraudulent misrepresentations been induced to subscribe for stock, may rescind his subscription,¹⁶ and upon the return of any stock certificates¹⁷ which have not already become worthless,¹⁸ and any dividends received to date,¹⁹ may recover the

¹⁴ *Schulte v. Boulevard Gardens Land Co.*, 164 Cal. 464, 468, 129 Pac. 582, A. C. 1914B 1013n, 44 L. R. A. (N. S.) 156n; *Dickinson v. Zubiarte Min. Co.*, 11 Cal. App. 656, 664, 106 Pac. 123. See contra *Kom v. Cody Detective Agency*, 76 Wash. 540, 136 Pac. 1155, 50 L. R. A. (N. S.) 1073.

¹⁵ *McIntyre v. E. Bement's Sons*, 146 Mich. 74, 109 N. W. 45, 10 A. C. 143.

¹⁶ *Franey v. Warner*, 96 Wis. 222, 71 N. W. 81; *Stone v. Walker*, 201 Ala. 130, 77 So. 554, L. R. A. 1918C 839; *Smith v. Jones*, 173 Ky. 776, 191 S. W. 500, L. R. A. 1917C 890.

¹⁷ *Building & Loan Ass'n v. Cameron*, 48 Neb. 124, 66 N. W. 1109.

¹⁸ *Zang v. Adams*, 23 Colo. 408, 48 Pac. 509, 58 A. S. R. 249.

¹⁹ *Marten v. Paul O. Burns Wine Co.*, 99 Cal. 355, 33 Pac. 1107.

amount which he has already paid. It is not necessary that the person making the false representations should have been authorized by the corporation to use such means to secure subscriptions.²⁰ It is necessary, however, that the representations should have been acted upon to the actual damage of the subscriber.¹ Such damage is measured by the value of the stock if the representations were true; and it is no bar to rescission that the stock is actually worth what has been paid for it.²

One seeking to rescind must act promptly upon his discovery of the fraud. After an appreciable lapse of time during which he has recognized his connection as a stockholder with the corporation and claimed his rights as such, he may be said to have thereby ratified the transaction of which he complains, and will be afforded no relief.³ He should, within a reasonable time after discovering the fraud, and before the rights of innocent third persons have accrued, rescind, or offer to rescind the contract,⁴ which includes the duty to return or offer to return his stock to the company. Laches as a bar to a subscriber's right to repudiate his subscription begins to run, however, only from the time when the subscriber is first chargeable with notice that a fraud has been perpetrated upon him.⁵

§ 463. Insolvency of Corporation as Precluding Right to Rescind Subscription on Ground of Fraud.—If a subscription for shares has been obtained by fraudulent representations, it may be annulled by the subscribers at any time before other equities have intervened. But the circumstances must be very favorable to the subscriber to enable him to withdraw after the rights of creditors have attached. Indeed it has been held by a few courts that it is too late for the stockholders after the company has become insolvent to avoid liability to creditors because of alleged fraudulent represen-

²⁰ *Talmadge v. Sanitary Sec. Co.*, 31 App. Div. 498, 52 N. Y. Supp. 139.

¹ *American Building Ass'n v. Bear*, 48 Neb. 455, 67 N. W. 500.

² *Mack v. Latta*, 83 App. Div. 242, 82 N. Y. Supp. 130.

³ *Upton v. Englehart*, 3 Dill. (U. S.) 496, 29 Fed. Cas. No. 16,800; *Newton Nat. Bank v. Newbegin*, 74 Fed. 135, 40 U. S. App. 1; *Wallace v. Bacon*, 86 Fed. 553; *Buker v. Leighton Lea Ass'n*, 63 App. Div. 507, 71 N. Y. Supp. 610; *Medley v. Johnson*, 200 Ky. 689, 255 S. W. 532.

⁴ *Zang v. Adams*, 23 Colo. 408, 48 Pac. 509, 58 A. S. R. 249.

⁵ *Virginia Land Co. v. Haupt*, 90 Va. 533, 19 S. E. 168, 44 A. S. R. 939; *Mitchel v. Hancock* (Tex. Civ. App.), 196 S. W. 694.

tations made to them to induce their subscriptions.⁶ However, a majority of the courts either hold directly that insolvency of the corporation does not, in and of itself, cut off the right of a defrauded stockholder to escape his liabilities as such, or else impliedly support the same rule by basing the stockholder's loss of his right to rescind for fraud upon laches or some other element of estoppel in combination with the insolvency of the corporation.⁷

§ 464. Tender on Notice of Rescission.

To American Rice Millers, Incorporated.

Gentlemen: Please take notice that inasmuch as you have failed to comply with the terms and conditions of your agreement with me not to call for any portion of the unpaid installments on account of my subscription contract and furthermore inasmuch as said subscription was obtained from me on the representation by you that Mr. John Wonder had subscribed for \$10,000 of said stock, which representation I have just learned was untrue, I do hereby rescind said agreement and demand the return to me of the sum of \$8500 paid by me on account of the purchase price of said stock and I do herewith tender the return to you of the certificates for said stock standing in my name and offer to deliver them to you upon the repayment to me of the sum above specified.

Dated January 15, 1926.

FRED J. McWILLIAMS.

§ 465. Remedy of the Subscriber.—Upon the refusal of a corporation to issue to a subscriber a certificate for stock to which he has become entitled under the terms of his contract, he may sue the corporation for damages. In the case of an overissue, this is his only remedy, for there is no valid stock in existence which may be issued

⁶ Taylor v. American National Bank, 2 Fed. (2d) 479; Meholin v. Carlson, 17 Idaho 742, 107 Pac. 755, 134 A. S. R. 286; Butterworth v. Ross, 238 Mass. 279, 130 N. E. 678; Duke v. Johnson, 123 Wash. 43, 211 Pac. 710.

⁷ Salter v. Williams, 219 Fed. 1017; Green v. Stone, 205 Ala. 381, 87 So. 862; Dox v. R. E. Lomax Co., 29 Cal. App. 718, 156 Pac. 874; Faris v. Beck, 74 Colo. 480, 222 Pac. 652; Niemeyer v. Dougan, 31 Ga. App. 99, 119 S. E. 544; Lamb v. Bonestell, 186 Iowa 971, 173 N. W. 13; Medley v. Johnson, 200 Ky. 689, 255 S. W. 532; Provan v. Bondeson, 157 Minn. 478, 196 N. W. 659; Stone v. Young, 210 App. Div. 303, 206 N. Y. Supp. 95; Smith v. Schmitt, 112 Ore. 687, 231 Pac. 176; Mitchell v. Bowles (Tex. Civ. App.), 248 S. W. 459; Irby v. Harvey, 143 Va. 51, 129 S. E. 220; Johns v. Coffee, 74 Wash. 189, 133 Pac. 4.

to him.⁸ In other cases of refusal, however, he may secure the specific performance of his contract, the corporation being compelled to issue to him a certificate.⁹

⁸ *Lacombe v. Forstall*, 123 U. S. 562, 31 L. Ed. 255, 8 S. C. R. 247; *Summerlin v. Fronteriza, etc., Co.*, 41 Fed. 249.

⁹ *Iron R. Co. v. Fink*, 41 Ohio St. 321, 52 A. R. 84; *Dousman v. Wls. & L. S., etc., Co.*, 40 Wis. 418.

CHAPTER XXVIII.

STOCK CERTIFICATES.

- § 466. Stock Certificates at Common Law.
- § 467. Necessity for Certificate.
- § 468. Issuance of the Certificate.
- § 469. By-Law Providing for Issuance of Partly Paid Stock.
- § 470. Nature of Stock Certificates.
- § 471. Preparation of the Certificate.
- § 472. Certificates for Common Stock.
- § 473. Certificates for Preferred Stock.
- § 474. Certificate of Preferred Stock—United States Steel Corporation.
- § 475. Certificate for Preferred Stock With Right to Vote.
- § 476. Certificate for Redeemable Preferred Stock.
- § 477. Certificate for Non-Par Stock.
- § 478. Part-Paid Stock Certificates.
- § 479. Certificate for Non-Assessable Stock.

§ 466. **Stock Certificates at Common Law.**—At common law, when a stockholder secured an interest in a corporation the books of the company were deemed sufficient evidence thereof. Gradually, however, a custom grew whereby some corporations issued certificates indicating the interest of each stockholder. The convenience incident to this practice became so apparent that the receipt of such a certificate by a stockholder soon came to be looked upon as a right. Accordingly, the statutes of most states require the issuance of such a certificate to each stockholder.

§ 467. **Necessity for Certificate.**—Some sort of subscription or contract is required to constitute one a stockholder, whereby the subscriber obtains the right, upon some condition, to demand stock and to exercise the rights of a stockholder.¹ But it is not essential that a certificate should have been issued, in order to create the relation of stockholder,² provided a contract to take stock has been duly made, or provided the rights, privileges, and emoluments of the stockholder have been enjoyed, with the consent of the corporation.³

¹ *Cattlemen's Trust Co. v. Swearingen* (Tex. Civ. App.), 200 S. W. 596; *De Loach v. Bennett*, 156 Ga. 633, 119 S. E. 592.

² *Cummings v. State*, 47 Okla. 627, 149 Pac. 864, L. R. A. 1915E 774; *Hardee v. Adams Oil Ass'n* (Tex. Civ. App.), 254 S. W. 602.

³ *Butler University v. Scoonover*, 114 Ind. 381, 16 N. E. 642, 5 A. S. R. 627.

A certificate of stock is authentic evidence of the title to stock, but it is not the stock itself, nor is it necessary to the existence of the stock.⁴

§ 468. Issuance of the Certificate.—Generally all corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary. Under some statutes, a by-law may provide for the issuance of a certificate before full payment;⁵ but in the absence of such a by-law, the corporation is not bound to issue a certificate till full payment has been made.⁶ Any certificate issued prior to full payment should show on its face what amount has been paid thereon. A certificate of stock issued by corporations authorized by their articles of incorporation to issue stocks of different classes should express upon its face the character of stock represented, and should also state the number of shares of stock of each class which the corporation is authorized to issue, and a statement of the nature and extent of the preference granted to the preferred stock.

§ 469. By-Law Providing for Issuance of Partly Paid Stock.—Board of directors have power to authorize the issuance of certificates of stock where the stock is only partially paid up, but all such certificates should show upon their face the amount which has been paid upon account of the stock represented by such certificate and the amount still unpaid.⁷

§ 470. Nature of Stock Certificates.—Such certificate is often erroneously confounded with that which it represents. It is, however, merely evidence of the holder's interest in the corporation, just as a deed is evidence of ownership of land. The ownership of the stock may exist in fact, although a certificate may not have been issued.⁸ Thus, a subscriber for stock becomes a stockholder from the

⁴ *Galbraith v. McDonald*, 123 Minn. 208, 143 N. W. 353, A. C. 1915A 420, L. R. A. 1915A 464n; *Yeaman v. Galveston City Co.*, 106 Tex. 389, 167 S. W. 710, A. C. 1917E 191.

⁵ *Green v. Abietine Medical Co.*, 96 Cal. 322, 329, 31 Pac. 100.

⁶ *California Southern Hotel Co. v. Callender*, 94 Cal. 120, 127, 29 Pac. 859, 28 A. S. R. 99.

⁷ *California Civil Code*, sec. 323; *Idaho Comp. Stats.* 1919, sec. 4729; *Montana Rev. Codes* 1921, sec. 5953.

⁸ *Craig v. Hesperia Land & W. Co.*, 113 Cal. 7, 45 Pac. 10, 54. A. S. R. 316, 35 L. R. A. 306.

time that the subscription contract was entered into, even if a certificate for the stock has never been issued.⁹ In this case, he may demand and sue for the issuance to him of a certificate at any time. This is a continuing right against which the statute of limitations does not run.¹⁰ On the other hand, a certificate is but *prima facie* evidence; that is, it may be rebutted by other evidence, as to the holder's title or as to the validity of the issue.¹¹ The certificate, the articles, the by-laws, and the statute under which the corporation was formed, constitute the contract between the stockholders and the corporation and among the various stockholders.¹² Issuance by a corporation of new certificates of stock to persons purchasing shares from existing stockholders is an express acceptance by the corporation of them as stockholders, and gives them the right possessed by their predecessors in title.¹³

§ 471. Preparation of the Certificate.—Prior to their issue, stock certificates in number sufficient to answer the needs of the corporation are procurable in book form. They are printed with the necessary blanks, both in the body and in the stub, and are consecutively numbered. In some states, Indiana for instance, such numbering is required by statute. The forms given below would answer in probably every state and territory in the United States. Though the corporate seal is not necessary, it is a wise precaution for the prevention of fraud for the secretary to affix it to each certificate issued. The stock certificate book is usually kept by him. The signature of the secretary is usually necessary. In a few states it is required that either the president or treasurer, or both, shall join with the secretary in signing certificates. In Indiana, only the treasurer need

⁹ *San Francisco Commercial Agency v. Miller*, 4 Cal. App. 291, 293, 87 Pac. 630; *Hughes Mfg., etc., Co. v. Wilcox*, 13 Cal. App. 22, 28, 108 Pac. 871.

¹⁰ *Cortelyou v. Imperial Land Co.*, 156 Cal. 373, 104 Pac. 695.

¹¹ *Hall v. Rose Hill, etc., R. Co.*, 70 Ill. 673; *Courtright v. Deeds*, 37 Iowa 503; *Walker v. Detroit Transit R. Co.*, 47 Mich. 338; *Broadway Bank v. McElrath*, 13 N. J. Eq. 24.

¹² *Pronick v. Spirits Distributing Co.*, 58 N. J. Eq. 97, 42 Atl. 586; *Cincinnati, etc., R. Co. v. Citizens Nat. Bank*, 11 Ohio Dec. (reprint) 50, 24 Cinc. L. Bul. 198; *Daley v. People's Building, Loan & Sav. Ass'n*, 172 Mass. 533, 52 N. E. 1090.

¹³ *Continental Ins. Co. v. Minneapolis, St. P. & S. S. M. R. Co.*, 290 Fed. 87, 31 A. L. R. 1320.

sign; in New Jersey, the president and the treasurer. In the absence of statutes the matter may be disposed of in the by-laws. The most usual provision found is that both the president and the secretary shall sign. The blanks in the printed certificates should all be carefully filled.

§ 472. Certificates for Common Stock.—The form below for a certificate and stub for common stock in a corporation issuing only common stock may be used, or easily adapted for use in any corporation.

Certificate for Common Stock.

Certificate No. Shares, 10. Date, Mar. 1, 1926. To whom issued, E. P. Jones. Address, P. O. Box 129, Georgetown, D. C. Issued against sur- rendered certi- ficate No. Receipt of the above certificate admitted this March 1, 1926. E. P. Jones. Certificate No. Canceled 65 Certificates issued in its stead as follows: No... for ..shares No... for ..shares No... for ..shares	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">No.</td> <td style="width: 40%; text-align: center;">_____</td> <td style="width: 30%; text-align: right;">10 shares.</td> </tr> <tr> <td colspan="3" style="text-align: center; padding-top: 10px;"> THE NEW ERA PRINTING COMPANY. </td> </tr> <tr> <td colspan="3" style="text-align: center; padding-top: 10px;"> Incorporated under the laws of the State of </td> </tr> <tr> <td colspan="3" style="text-align: center; padding-top: 10px;"> Capital stock, \$100,000. No. of shares, 1,000. Par value, \$100. </td> </tr> <tr> <td colspan="3" style="text-align: center; padding-top: 10px;"> Full paid. </td> </tr> <tr> <td colspan="3" style="padding-top: 20px;"> <p>This certifies that E. P. Jones is the owner of ten shares of the common capital stock of the New Era Printing Company, transferable on the books of the company by the owner thereof in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.</p> <p style="text-align: right;">Witness the corporation seal and the signatures of its officers, duly authorized.</p> <p style="text-align: right;">Dated March 1, 1926.</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <p>J. F. WESTON, Secretary. (Corporate Seal.)</p> </div> <div style="width: 45%; text-align: right;"> <p>JAMES WILLARD, President.</p> </div> </div> </td> </tr> </table>	No.	_____	10 shares.	THE NEW ERA PRINTING COMPANY.			Incorporated under the laws of the State of			Capital stock, \$100,000. No. of shares, 1,000. Par value, \$100.			Full paid.			<p>This certifies that E. P. Jones is the owner of ten shares of the common capital stock of the New Era Printing Company, transferable on the books of the company by the owner thereof in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.</p> <p style="text-align: right;">Witness the corporation seal and the signatures of its officers, duly authorized.</p> <p style="text-align: right;">Dated March 1, 1926.</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <p>J. F. WESTON, Secretary. (Corporate Seal.)</p> </div> <div style="width: 45%; text-align: right;"> <p>JAMES WILLARD, President.</p> </div> </div>		
No.	_____	10 shares.																	
THE NEW ERA PRINTING COMPANY.																			
Incorporated under the laws of the State of																			
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If by the articles or the charter of the particular corporation no provision is made for preferred stock, its certificates will be understood to represent common stock without a specification to that effect. But if the issuance of both kinds is provided for in the articles, charter, or by-laws, being authorized by statute, each certificate should clearly indicate on its face the kind of stock which it represents. This may be done by printing across the face of the

certificate, in bold type, the words, "Common Stock," and, in addition, the words, "ten shares of the capital stock" (as in the body of the preceding form), should be changed by insertion of the word "common" between the words "the" and "capital." If, for example, the stock consists of \$75,000 common and \$25,000 preferred, then, in lieu of "Capital stock, \$100,000." in the heading there should be printed:

Capital stock	\$100,000
Common stock	75,000
Preferred stock	25,000

§ 473. Certificates for Preferred Stock.—Certificates for preferred stock should be distinguished in the same way, and should clearly show in what the preference consists, either by setting it forth in detail, or by reference to the articles or by-laws, and all the conditions upon which it is issued, as well as any limitations placed upon the owner of it as to voting if such limitation is not prohibited by statute. The following is a proper and easily adaptable form:

Certificate for Preferred Stock.

THE NEW ERA PRINTING COMPANY.

Incorporated under the laws of
the State of

Capital stock	\$100,000
Common stock	75,000
Preferred stock	25,000

Shares, \$100 each.
Full paid.

(The stub is the same as in the previous form, except that the word "preferred" should appear at the top or across its face.)

This is to certify that Robert Forbes is the owner of twenty-five shares of the preferred stock of the New Era Printing Company, transferable on the books of said corporation by the owner thereof, in person or by attorney, duly authorized, upon surrender of this certificate properly endorsed.

The preferred stock represented by this certificate is entitled to an annual dividend of five per cent, payable out of net profits of the corporation before any dividend is paid upon the common stock; and if the net profits in any year should be insufficient to pay said preferred dividend, either in whole or in part,

any unpaid portion thereof shall become a charge against the net profits of the corporation, and shall be paid in full out of the net profits before any dividends are paid upon the common stock.

The preferred stock represented by this certificate is subject to redemption at the option of the said corporation at any time after six years from the date hereof, upon payment of its par value and any accumulated dividends, and, unless sooner retired, shall be redeemed by said corporation at its par value, with payment of any accumulated dividends, on the 1st day of March, 1926.

The preferred stock represented by this certificate is not entitled to vote at stockholders' meetings of said corporation, nor to participate in profits beyond its fixed preferential cumulative annual dividend of five per cent.

Witness the signatures of the officers of said corporation, duly authorized, and its corporate seal hereto affixed.

JAMES WILLARD,

President.

J. F. WESTON,

Secretary.

(Corporate Seal.)

§ 474. Certificate of Preferred Stock — United States Steel Corporation.

Seven Per Cent Cumulative Preferred Stock.

No.

Shares

Incorporated Under the Laws of the State of New Jersey.

UNITED STATES STEEL CORPORATION.

This is to certify that Henry Payson is the owner of one hundred and fifty fully paid and non-assessable shares of the par value of one hundred dollars each in the preferred capital stock of the United States Steel Corporation, transferable only in person, or by attorney, upon the books of said corporation, upon surrender of this certificate. The holders of the preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the corporation, yearly, dividends at the rate of seven per cent per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per centum shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for

all previous years shall have been declared and shall have been payable, and the accrued quarterly installments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, and shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter out of the remaining surplus or net profits. In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock, and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon the remaining assets and funds shall be divided and paid to the holders of the common stock, according to their respective shares. The preferred stock and the common stock may be increased as provided in the certificate of incorporation. This certificate is not valid without the signature of the transfer agent, and the registrar of transfers.

Witness the signatures of the president or of the vice president and of the treasurer or of an assistant treasurer of said corporation.

....., Treasurer., President.

Registered,, 19...

....., Trust Company, Registrar.

By,
Asst. Secretary.

....., Trust Company, Transfer Agent.

By,
Asst. Secretary.

§ 475. Certificate for Preferred Stock With Right to Vote.—

The following form of certificate for preferred stock differs materially from the above, conforming, we will suppose, to different provisions in the contracts of subscription and the by-laws. Here the preferred shares first draw a dividend of five per cent, and the common stock at the same time draws a dividend of five per cent if the residue of profits warrant it; after which, any remaining profits are apportioned to both preferred and common stock, pro rata. Nor does it contain any restriction upon the voting privileges of the owner.

..... COMPANY.

Incorporated under the laws of
the State of

No.	25 shares.
Capital stock	\$100,000
Common stock	75,000
Preferred stock	25,000

Shares, \$100 each.
Full paid.

This is to certify that is the owner of twenty-five shares of the preferred stock of the Company, transferable only on the books of said corporation, by the owner thereof, in person or by attorney, duly authorized, upon surrender of this certificate properly endorsed.

The stock represented by this certificate is part of an issue of \$25,000, par value, authorized by the terms set forth by the articles of incorporation of the said company, as filed in the office of the secretary of the state of, on the 15th day of February, 1926, and incorporated herein as follows:

The holders of said preferred stock are entitled to receive a cumulative preferential dividend of five per cent per annum, payable each year out of the net earnings of said corporation before the reservation of any sum out of the net earnings is made for working capital, and before any dividend is paid upon the common stock; but, should the net earnings in any one year be insufficient to pay said preferred dividend in full, such portion of said dividend as may be available for the purpose shall be paid, and any unpaid dividends shall be charged against the net earnings of said corporation and shall be paid in full out of the first available net earnings.

If, after the payment of said dividend of five per cent upon said preferred stock for any year, together with any or all arrearages thereon, any further available profits shall remain, the directors of said corporation may, at their option, declare and pay a dividend not exceeding five per cent upon the outstanding common stock, and should there still remain available net earnings, may declare such further and additional dividends upon all the outstanding stock of the corporation as may by them be deemed advisable, paying to common and preferred stock alike the same per centum of any such additional dividends.

Witness the signatures of the officers of said corporation,
duly authorized, and its seal affixed hereto, this March
15, 1926.

.....
Secretary.
(Corporate Seal.)

.....
President.

Where the terms and conditions upon which preferred stock is issued are expressed in great detail, so that their full insertion in the certificate would encumber it with excessive verbiage, a literal insertion is omitted and the terms, as embodied in the articles, or by-laws, are incorporated by reference thereto. If that method is necessary or desirable, the second and third paragraphs in the last preceding form may be omitted, and the following inserted, in lieu thereof:

The stock represented by this certificate is part of an issue of twenty-five thousand dollars (\$25,000), par value, of five per cent cumulative preferred stock, authorized by the articles of incorporation (or charter, or by-laws).

§ 476. Certificate for Redeemable Preferred Stock.—This certifies that Mrs. Lydia E. Incho is the owner of 500 shares of the preferred capital stock of the Mid-Continent Development Company, full paid and non-assessable, on which there shall be paid by said company from its net earnings a fixed yearly dividend from date of issuance, at the rate of seven per cent per annum, payable semi-annually, which shall be earned before dividends are declared from time to time on the common stock. This stock is also preferred as to the assets of the corporation in case of winding up its affairs, and shall not be entitled to any further dividends nor have any voting power. The stock is redeemable at the option of the company after one year from date of issuance by paying par value thereof, with accrued dividends.¹⁴

§ 477. Certificate for Non-Par Stock.

NORTH AMERICAN MAGNESITE COMPANY.

This certificate evidences the fact that William H. Cobb is the owner of one hundred (100) shares out of a total authorized issue of fifty thousand (50,000) of the capital stock of the North American Magnesite Company, transferable on the books of the company by surrender hereof properly endorsed.

Dated this 16th day of January, 1926.

HIRAM JOHNSON, President.

JAMES PHELAN, Secretary.

§ 478. Part-Paid Stock Certificates.—Care must be taken, as prescribed in the statutes of some states, to designate properly the amount paid on the stock, where the certificate has been issued prior

¹⁴ *Incho v. Mid-Continent Development Co.*, 94 Kan. 370, 146 Pac. 1014, A. C. 1917B 546-548.

to full payment. This may be done by having the secretary stamp or write on an ordinary certificate the words "Paid hereon the sum of \$..... per share., Secretary."

§ 479. Certificate for Non-Assessable Stock.—The corporation may agree with a stockholder that after the stock has been fully paid for, no assessments will be levied upon it. The certificate for such stock should be as follows:

Certificate for Non-Assessable Stock.

No. shares.

THE COMPANY.

Incorporated under the laws of the State of

Capital stock,

Number of shares, Par value,

Full paid and non-assessable.

This certifies that is the owner of ten shares of the capital stock of the Company, transferable only on the books of the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed.

In Witness Whereof, The said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this day of, A. D. 1926.

(Seal.)

.....

Secretary.

.....

..... President.

CHAPTER XXIX.

LOST CERTIFICATE.

- § 480. Stockholder's Right to a Restoration of a Lost Certificate.
- § 481. Methods for Restoring Lost Certificate.
- § 482. Indemnity Bond Where Certificate Is Lost or Stolen, Upon Issue of New Certificate.
- § 483. Restoration of Lost Certificates by Suit at Law.
- § 484. Effect of the Proceedings for the Issuance of a New Certificate.

§ 480. Stockholder's Right to a Restoration of a Lost Certificate.—One who has lost or had stolen a certificate of stock is not thereby deprived of any of his rights as a stockholder. By notifying the corporation officials not to recognize any assignment or purported endorsement, he may circumvent the designs of an unscrupulous finder or thief, and avoid any confusion which might otherwise result if the endorsement and power of attorney were signed in blank. But as a certificate upon which he may place his endorsement is a convenient instrument when the stockholder wishes to transfer his stock or effect a pledge thereof, its loss is a business detriment to him. On the other hand, the corporation cannot well be expected to issue to him a new certificate and run the risk of having the old one turn up in the hands of an innocent party as the result of a false claim of loss by the stockholder himself.

§ 481. Methods for Restoring Lost Certificates.—In order, therefore, that both the stockholder and the corporation may be protected, the former should, where no other remedy is available, offer the corporation an adequate bond indemnifying it against any possibility of the old certificate appearing subsequently, to the damage of the corporation, and should request in consideration thereof a new certificate. A refusal by the corporation renders it liable to action and costs.¹ The bond may be as follows:

¹ *Keller v. Eureka B-M. M. Co.*, 43 Mo. App. 84, 11 L. R. A. 472.

§ 482. Indemnity Bond Where Certificate Is Lost or Stolen, Upon Issue of New Certificate.

Know All Men by These Presents, That we, Robert Ainslie, of Georgetown, D. C., as principal, and J. J. Stetson and Warren Dumont, both of Washington, D. C., are held and bound unto the Company, a corporation, in the sum of ten thousand dollars (\$10,000), to the payment of which to the said corporation, we, by these presents, jointly and severally bind ourselves, our heirs, executors and administrators.

Upon condition that: Whereas, The said Robert Ainslie, the owner of record of one hundred shares of the capital stock of said Company of the par value of one hundred dollars each, has made application to the board of directors of the said company for the issue to him of a new certificate for the said one hundred shares of stock, alleging that the original certificate No., issued to him therefor on the 1st day of May, 1926, is lost, stolen or destroyed, and that its present whereabouts and condition are unknown to him; and whereas the said application has been granted, and the said new certificate for one hundred shares of the capital stock of said corporation, pursuant to the resolution of the said board of directors, was this day issued to the said Robert Ainslie;

Now, Therefore, If the said Robert Ainslie, his heirs, executors, or administrators, or any of them do and shall from time to time, and at all times hereafter, save, defend, keep harmless and indemnify, the said corporation from and against all demands, claims, or causes of action, arising from, or on account of said certificate No., for one hundred shares of the capital stock of said corporation, and of and from all costs, damages and expenses that shall or may arise therefrom, and shall also deliver, or cause to be delivered up to the said corporation the said missing certificate No. for cancellation, if, and whenever, and so soon as, the same shall be found or recovered, then this obligation shall be void: otherwise it shall remain in full force and effect.

Witness our hands and seals this, the 10th day of May, 1926.

ROBERT AINSLIE, (Seal.)

J. J. STETSON, (Seal.)

WARREN DUMONT. (Seal.)

(Acknowledgment.)

Endorsed by secretary: Approved May 15th, 1926. See Minute Book, page

Such a course would be effective in states where there is no statute on the subject. In New York and New Jersey the corporation may in such a case issue the new certificate either with or without requiring a bond, and, upon a refusal, may be required by mandamus to issue it upon the execution by the stockholder of a proper bond. The judgment in such cases discharges the corporation from all liability to any person who may thereafter appear and prove to be

the lawful owner of the old certificate, the latter having recourse to the bond of indemnity. In Massachusetts it is provided by statute that the corporation may, at its option, enact a by-law permitting a restoration of a lost or stolen certificate and may require a bond in a sum not to exceed double the market value of the stock.

§ 483. Restoration of Lost Certificates by Suit at Law.—In some states it is provided by statute that whenever a certificate of stock or of shares in a corporation organized under the laws of the state has been lost, destroyed or wrongfully withheld, the owner thereof may bring an action against such corporation in court for the purpose of obtaining a new or duplicate certificate.²

§ 484. Effect of the Proceedings for the Issuance of a New Certificate.—After the issuing of a new certificate by the corporation pursuant to any judgment in such action, no action may ever be maintained by any person against the corporation in reference to the lost or destroyed certificate or the shares represented thereby, and thereafter any such action is forever barred as against the corporation. Under the terms of such a statute, the corporation is not prevented from issuing a new certificate without suit if it so desire; but an effective method is provided by which the rights of all parties may readily be ascertained and protected. A bond is seldom required, the action being in the nature of a suit to quiet title rather than one for the mere issuance of the certificate. Under the New Jersey law the rights of the real owner, if he should appear to be other than the party suing, continue to exist and may be enforced, as pointed out, by resort to the bond.

² California Civil Code, section 328.

CHAPTER XXX.

LISTING STOCK ON THE EXCHANGES.

- § 485. Listing Stocks.
- § 486. Requirements for Original Listing of Stock.
- § 487. Requirements for Original Listing of Bonds.
- § 488. Requirements for Listing of Additional Amounts.
- § 489. Requirements for Listing of Certificates of Deposit, Voting Trust or Stock Trust Certificates, etc.
- § 490. Papers to Be Filed With Applications.
- § 491. Agreements to Be Incorporated and Applications to List.
- § 492. Trustees of Mortgages Where Securities Are Listed.
- § 493. Transfer and Registry of Listed Securities.
- § 494. Forms of Certificates, Engraving, etc., for Listed Securities.
- § 495. Additional Requirements for Listing Bonds.
- § 496. Additional Requirements for Listing Stock.
- § 497. Additional Requirements for Listing Certificates of Deposit, Voting Trust Certificates, etc.
- § 498. Temporary Certificates or Receipts.
- § 499. Removals or Suspensions in Dealings of Listed Securities.

§ 485. **Listing Stocks.**—The stocks of the greatest corporations in the United States are listed on the various stock exchanges. The fact that a stock is listed is to a certain extent a certificate of good character. The requirements of the New York Stock Exchange are given here, both for guidance in preparing for listing stocks on the exchange and also as indicating the information which the best financiers consider necessary to obtain regarding a corporation before they will permit it to be sold upon the exchanges.

An application, conforming to these requirements, signed by an executive officer of the applying corporation, voting trustees, or depository committees, and nine printed or typewritten copies must be filed with the secretary of the exchange at least five days prior to date set for consideration.

Applications must be accompanied by the required papers and agreements, and by a check for one hundred dollars for each \$1,000,000 or portion thereof, of each class of security (including stock of the par value of \$100 per share), or where stock of a par value of less than \$100 per share check for one hundred dollars for each 10,000 shares or portion thereof, or where stock without nominal or par value check for one hundred dollars for each 10,000 shares or portion thereof; checks to be drawn to the order of "Treasurer, New York Stock Exchange." In addition, companies making application are required to pay cost of printing. Printers' bills will be submitted directly to the applicant.

An application for listing governmental, state, county or municipal securities must be signed by a properly accredited official or by financial representatives, and be accompanied by required check, as above, and papers.

Specimen applications furnished on request.

§ 486. Requirements for Original Listing of Stock.

Every application for an original listing of capital stock should recite:

A. Where incorporated.

B. (1) Amount applied for (whether temporary or permanent certificates); (2) authorized issue.

C. (1) Date of charter; (2) duration.

D. (1) Business; (2) special rights or privileges under charter or by-laws.

E. (1) Whether capital stock is full paid; (2) non-assessable; and (3) whether liability attaches to shareholders.

F. (1) Issues (by classes), dividend rate and par value; (2) total amount of each, authorized and issued; (3) increases and authority therefor, including (a) action by stockholders, (b) by directors and (c) by public authorities, etc.; (4) amount unissued, (a) options or contracts on same, (b) specific reservation for conversion.

G. If preferred stock; (1) whether cumulative or non-cumulative; (2) preferences, including (a) voting power; (b) dividends; (c) distribution of assets on dissolution or merger; (d) redemption; (e) convertibility; (f) special provisions.

H. Voting power of obligations of debt.

I. (1) Purpose of issue; (2) application of proceeds; (3) amount issued for securities, contracts, property; description and disposition; (4) additional property to be acquired, with particulars, as required by paragraph N.

J. (1) History of corporation; (2) of predecessor companies or firms, with location and stock issues (by classes); (3) conditions leading to new organization.

K. Tabulated list of constituent, subsidiary, owned or controlled companies showing (a) date of organization; (b) where incorporated; (c) duration of charter; (d) business and (e) capital stock issues (by classes), par value, amount authorized, issued, owned by parent company.

L. (1) Mortgage, and (2) other indebtedness showing, (a) date, (b) maturity, (c) interest rate, (d) convertibility, (e) redemption by sinking fund or otherwise, (f) amount authorized, and (g) amount issued; (3) similar information regarding mortgage and other indebtedness of constituent, subsidiary, owned, or controlled companies.

M. Other liabilities, joint and several, (1) guaranties, (2) leases, (3) traffic agreements, (4) trackage agreements, (5) rentals, (6) car trusts, etc., (7) terms of each, and provision for payment; (8) similar description

of other agreements or easements; (9) similar information as to constituent, subsidiary, owned or controlled companies.

N. (1) Description, location, nature and acreage of property, (a) owned in fee; (b) controlled; (c) leased; (2) railroads, mileage completed, operated and contemplated; (3) equipment; (4) character of buildings and construction; (5) tabulated list of franchises showing (a) where granted, (b) date, (c) duration, (d) purpose; (6) timber, fuel or mining lands, water rights; (7) similar information as to constituent, subsidiary, owned or controlled companies.

O. Policy as to depreciation.

P. (1) Character and amount of annual output for preceding five years; (2) estimated output (character and amount) for current year; (3) number of employees.

Q. (1) Dividends paid or declared; (2) by predecessor, and constituent, subsidiary, owned or controlled companies.

R. Financial statements; (1) earnings for preceding five years if available with interest charges, depreciation and federal taxes; (2) income and surplus account of recent date for at least two years, if available; (3) balance sheets of same dates; (4) balance sheet giving effect to recent financing, if any; (5) similar accountings for predecessor, constituent, subsidiary, owner or controlled companies; (6) corporations consolidated within one year previous to date of application, income and surplus account and balance sheet of all companies merged and balance sheet of applying corporation; (7) if in hands of receiver within one year previous to date of application, (a) income account and balance sheet of receiver at time of discharge if available, (b) balance sheet at close of receivership if available, and (c) balance sheet at date of reorganization.

S. Agreements contained on following pages.

T. Fiscal year.

U. Place and date of annual meeting.

V. Location of principal and other offices.

W. Names of (1) directors, classified, with addresses; (2) officers; (3) transfer agents, with addresses; (4) registrars, with addresses.

In addition to the above, applications from corporations which own or operate mines must recite:

A. Patented and unpatented claims, by numbers.

B. (1) Geological description of country; (2) location and description of mineral and other lands; (3) ore bodies; (4) average value of ore; (5) character and analysis; and (6) methods of treatment.

C. History of workings, (1) results obtained; (2) production each year.

D. (1) Ore reserves compared with previous years showing separately as to character and metal content; (2) estimate of engineer as to probable life of mines; (3) probabilities by further exploration.

E. (1) Provisions for smelting and concentration; (2) proximity of property to railway or other common carrier.

F. Properties in process of development; income account if available; guaranties for working capital and for completion of development in event income account not available.

G. Total expenditures for preceding five years for acquisition of new property, development, proportion charged to operations each year.

H. (1) Policy as to depletion; (2) acquisition of new property; (3) new construction and development.

I. Production by tons, number of tons of ore treated, average assay yield, percentage of extraction, recovery per ton of ore, for preceding five years, if available.

In addition to the above, applications from corporations which own or operate oil and gas wells must recite:

A. (1) Brief history of oil field; (2) geological description of country; (3) character and gravity of oil.

B. (1) Total area of oil land (developed and undeveloped), (a) owned, (b) leased, (c) controlled, (d) proved, (e) under exploitation, (f) royalties.

C. (1) Number of wells (oil or gas) on each property, (a) in operation, (b) drilling, (c) contemplated, (2) average depth of wells drilled, (a) shallowest, (b) deepest, (c) probable life; (3) whether oil sands are dipping.

D. (1) Gross daily production—initial and present; (2) annual production from each property for preceding five years, if available; (3) estimated gross production for current year.

E. (1) Storage, capacity and location; (2) (a) amount of oil stored, (b) character, (c) value, (3) pipe line, (a) gauge, (b) capacity, (c) mileage.

F. (1) Refineries, (a) capacity, (b) acreage, (c) employees, (d) products and by-products.

G. Properties in process of development; income account if available; guaranties for working capital and for completion of development in event income account not available.

H. Total expenditures for preceding five years for acquisition of new property, well drilling and development, proportion charged to operations each year.

I. (1) Policy as to depletion; (2) acquisition; and (3) development of new properties.

NOTE.—For requirements as to voting trust or stock trust certificates, or certificates of deposit, see following pages.

§ 487. Requirements for Original Listing of Bonds.

An application for an original listing of bonds should recite all information required for listing stock, and

A. (1) Full title; (2) amount applied for (whether temporary or permanent), denominations and numbers; (3) amount authorized and outstanding, authority therefor, including (a) action by stockholders, (b) directors, and (c) public authorities, etc.; (4) whether bonds are coupon (registerable as to principal) or registered, interchangeable or exchangeable; (5) exchangeability or convertibility into other securities, and terms.

B. Names and addresses of trustees.

C. (1) Date of issue and maturity; (2) interest rate; (3) places at, and dates for payment of interest and principal; (4) where registerable or transferable; (5) kind and standard of money, and options; (6) tax exemption; (7) whether redeemable or purchasable in whole or in part by sinking fund or otherwise, showing (a) dates, (b) price, (c) duration and place of published notice; (8) specified reservation of stock for conversion.

D. Provisions for declaration of principal due and payable in event of default of payment of interest, or other defaults, and waiver; percentage of outstanding bonds controlling trustee.

E. Purpose of issue and application of proceeds, similar to that called for by paragraph I of the Requirements for Listing Stock; provisions as to additional issue.

F. Disposition of bonds refunded, redeemed or purchased for sinking fund, and mortgage securing same.

G. Mortgage or indenture provisions for (1) serial issues; (2) values in United States gold coin; (3) issuance in foreign languages and (4) that the English version governs; (5) terms of exchangeability of bonds payable in foreign places for bonds payable in United States or vice versa.

H. (1) Security—Mortgage, indenture of trust, or other agreement; and (2) liens; (a) properties covered, (b) mileage of railway lines, (c) buildings, (d) equipment, (e) securities, (f) rights, (g) privileges, (h) titles, (i) franchises, (j) leases, etc.; (3) other liens covering same or any part of same properties; (4) guaranty and terms.

I. Any unusual provisions or covenants contained in mortgage, or deed of trust.

§ 488. Requirements for Listing of Additional Amounts.

Refer to previous applications and last application by number and date, and recite:

A. Where incorporated.

B. (1) Amount applied for; (2) amounts authorized and outstanding; (3) authority for issue, including (a) action by stockholders, (b) by directors, and (c) by public authorities, etc.; (4) total amount applied for.

C. (1) Purposes of issue; (2) application of proceeds; (3) amount, description and disposition of securities exchanged for new issues; (4) additional property acquired or to be acquired, with particulars as required by paragraph N in Sec. 486.

D. Dividends paid and declared since previous application.

E. Changes, if any, in (1) charter, (2) by-laws, or (3) capitalization since previous application.

F. Changes in property, if any, since previous application.

G. (1) Character and amount of output since previous application or earnings as in application for original listing; (2) estimated output (character and amount) for current year; (3) number of employees.

H. Income account, surplus account and balance sheet of recent date,

also for constituent, subsidiary, owned or controlled companies, or a consolidated income account, consolidated surplus account and a consolidated balance sheet.

I. Policy as to depreciation and depletion.

J. Fiscal year, place and date of annual meeting, location of offices, and names of officials as covered by paragraphs T, U, V and W in section 486 above, relating to requirements for original listing of stock.

NOTE.—“When a corporation purposes to increase its authorized capital stock, thirty days’ notice of such proposed increase must be officially given to the Exchange before such increase may be admitted to dealings.”

NOTE.—“When the capital stock of a corporation is increased through conversion of convertible bonds already listed, the issuing corporation shall give immediate notice to the Exchange and the Committee on Stock List may, thereupon, authorize the registration of such shares and add them to the list.”

§ 489. Requirements for Listing of Certificates of Deposit, Voting Trust or Stock Trust Certificates, Etc.

Every application for the listing of certificates of deposit, voting trust or stock trust certificates, etc., should recite:

A. (1) Name of applicant; (2) amount applied for (whether temporary or permanent certificates); (3) depository; (4) security deposited, and whether listed; (5) registrar.

B. (1) Date of agreement; (2) names of committee, or voting trustees; (3) terms of trust; (4) powers and duties of committee, trustees, or depository.

C. Reasons for deposit.

D. (1) Duration of trust or deposit; (2) extensions or limitations; (3) final date of deposits; (4) provision for deposits without penalty for approximately thirty days after listing, or if no time limit for deposit of securities without penalty is fixed, an agreement that approximately thirty days’ notice of such limitation of time shall be published and given to the stock exchange; (5) date of presentation of plan; (6) provisions for dissent and withdrawal; (7) percentage necessary to adoption; (8) pro rata charges; (9) provisions for return of securities (or equivalent); (10) provision for payment of interest, dividends, etc.

E. Applications to list voting trust or stock trust certificates to recite financial statements of company as in section above relating to requirements for original listing of stock.

F. Agreement to deliver definitive securities at termination of voting trust or voting trust to be extended.

G. Agreement to have definitive securities listed.

H. Agreement by voting trustees to have company publish its financial statements.

I. Agreements contained in Sec. 490.

NOTE.—Application to list voting trust or stock trust certificates and certificates of deposit for securities not a delivery on the Stock Exchange, must, in addition, comply with the requirements.

“Applications for each class of deposited securities shall be separate and certificates issued of distinctive colors.”

45—Corporate Management

§ 490. Papers to Be Filed With Applications.

In addition to application for listing, the following papers must be filed:

For stocks:

1. Three copies of charter, with amendments to date, one copy attested by proper public authority.
2. Three copies of by-laws, with amendments to date, one copy attested by an executive officer of corporation.
3. Three copies of leases, franchises, easements and special agreements, one copy of each attested by an executive officer of corporation.
4. One copy of resolutions of stockholders and directors and copy of proper public authority authorizing issue, each attested by an executive officer of corporation.
5. One copy of resolutions of stockholders or directors, and copy of proper public authority, authorizing issue of stock on conversion of other securities, attested by an executive officer of corporation.
6. One copy of resolutions of stockholders or directors directing specific reservation of authorized stock for conversion, attested by an executive officer of corporation.
7. One copy of resolutions of stockholders, board of directors, or executive committee attested by an executive officer of corporation, authorizing, by name, official to appear for listing securities (form may be had on application).
8. Opinion of counsel (not an officer or director of the corporation) as to legality of (a) organization, (b) authorization, (c) issue, and (d) validity of securities. The committee will not accept the opinion of an officer or director of an applying corporation nor of a firm in which the officer or director is a member, as counsel on any legal question affecting the corporation; nor will it accept the opinion of an officer or director of a guarantor corporation nor of a firm in which the officer or director is a member, on any legal question affecting the issuance of guaranteed securities.
9. Six copies of detailed distribution of securities, one certified (form may be had on application).
10. One copy of resolution appointing transfer agent and registrar, attested by an executive officer of corporation.
11. Certificate of registrar of amount of securities registered at date of application.
12. Report of qualified engineer covering actual physical condition of property at recent date.
13. Map of property and contemplated extensions.
14. Specimens of all securities to be listed.
15. Questionnaire (form may be had on application).
16. Certified copy of income accounts, surplus accounts and balance sheets contained in application.
17. Agreements.
18. Certified copy of printed circular issued by bankers describing security, if available.

For bonds:

19. All papers required for listing stocks and also ten copies of the mortgage or indenture, one copy (a) certified to by trustee, (b) with copies of all certificates of proper recording.

20. Trustees' certificate required in Sec. 492.

21. One copy of resolutions of stockholders or directors, and copy of proper public authority, authorizing issue of stock on conversion of bonds, attested by an executive officer of corporation.

22. One copy of resolution of stockholders or directors directing specific reservation of authorized stock for conversion, attested by an executive officer of corporation.

23. Certificate of disposition of securities redeemed or refunded.

24. Certificate as to collateral deposited.

25. Certified copy of release or satisfaction of underlying mortgages.

For securities of reorganized corporations:-

1. All papers required for listing stocks and bonds. Opinion of counsel shall state that proceedings have been in conformity with legal requirements, that title to property is vested in new corporation and is free and clear from all liens and incumbrances, except as distinctly specified; and also as to equities of securities of predecessor corporation.

2. Certified order of court confirming sale on foreclosure or other authority for reorganization.

3. Certified copy of plan of reorganization.

4. Certified income and surplus account and balance sheet at close of receivership, if available.

5. Certified balance sheet at date of reorganization.

For additional amounts:

1. Nos. 4, 5, 6, 7, 8, 9, 11, 15, 16, 17, 18 of papers required for original listings.

2. Nos. 1, 2, 3, 10, 12, 14 of said papers for stock, if any changes have occurred therein since previous application.

3. Nos. 1, 2, 3, 12, 14, 20, 21, 22, 23, 24, 25 of said papers for bonds, if any changes have occurred therein since previous application.

4. Certified copy of proper public authority for increase.

For certificates of deposit, voting trust, etc.:

1. Papers required for listing stocks and bonds.

2. Certified copies of any legal proceedings and court orders.

3. Three copies of deposit or trust agreement, one certified to by proper authority.

4. Three copies of circulars, issued by trustees or committee, one certified to by proper authority.

5. Certificates of amounts deposited.

§ 491. Agreements to Be Incorporated and Applications to List.

To be made part of applications where applicable:

1. Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies, unless for retirement and cancellation, without notice to the stock exchange.

2. To publish once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and balance sheet of the parent company and of all constituent, subsidiary, owned or controlled companies.

3. To maintain, in accordance with the rules of the stock exchange, a transfer office or agency in the borough of Manhattan, city of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the borough of Manhattan, city of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

4. To notify the stock exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

5. Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a trustee of its bonds or other securities, without the approval of the committee on stock list, and not to select as a trustee an officer or director of the company.

6. To notify the stock exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, so as to afford the holders of its securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the borough of Manhattan, city of New York.

7. To notify the stock exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

8. To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the stock exchange, and to give to the stock exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

9. To redeem preferred stock in accordance with the requirements.

10. To notify the stock exchange if deposited collateral is changed or removed.

11. To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

The committee recommends a date be fixed as record for dividends, allotment of rights and stockholders' meetings, without closing the transfer books.

Notice of rights, allotments, subscription privileges, to bondholders and shareholders, should be as of a date after authorization.

§ 492. Trustees of Mortgages Where Securities Are Listed.

The committee recommends that a trust company or other financial corporation be appointed trustee of mortgages, indentures, and deeds of trust; and when a state law requires the appointment of an individual as trustee, a trust company or other financial corporation be appointed as cotrustee.

Each mortgage, indenture, or deed of trust should be represented by a separate trustee.

The committee will not accept as trustee:

(a) An officer or director of the issuing corporation;

(b) A corporation in which an officer of the issuing corporation is an executive officer.

The trustee shall present a certificate accepting the trust and certifying (1) securities are issued under the terms of the mortgage or indenture, giving the numbers, denominations and amount authenticated; (2) collateral deposited; (3) disposition of prior obligations. For additional issues of bonds, the trustee must certify that (1) increase is in conformity with terms of mortgage or indenture, giving numbers, denominations and amount authenticated; (2) additional collateral deposited; and (3) disposition of prior obligations.

The company and trustee shall notify the stock exchange of the holding, cancellation, or retirement of securities, by redemption, through the operation of sinking fund or otherwise.

The trustee must notify the stock exchange if deposited collateral is changed or removed, and furnish a list of collateral substituted.

A change of trustee shall not be made without the approval of the committee.

§ 493. Transfer and Registry of Listed Securities.

Every corporation whose securities are listed upon the stock exchange must, in accordance with the rules of the exchange, maintain (a) a transfer office and (b) a registry office, both in the borough of Manhattan, city of New York. The transfer agency and registrar shall not be identical, and both must be acceptable to the committee. A company cannot act as registrar of its own stock.

Where a stock is transferred at the company's office, the transfer agent

or transfer clerk shall be appointed by specific authority of the board of directors to countersign certificates, in said capacity, and shall be other than an officer who is authorized to sign certificates of stock.

The entire amount of the capital stock of a corporation listed upon the stock exchange must be directly transferable at the transfer office of the corporation in the borough of Manhattan, city of New York. When a corporation makes transfer of its share in other cities, certificates shall be interchangeably transferable, and identical in color and form, except as to names of transfer agent and registrar; and the combined amounts of stock registered in all cities shall not exceed the amount authorized to be listed.

Interchangeable certificates must bear a legend reciting the right of transfer in New York and other cities.

The registrar must file with the secretary of the stock exchange an agreement to comply with the requirements in regard to registration and not to register any listed stock, or any increase thereof, until authorized by the committee.

Certifications of transfer and registry must be dated and signed by an authorized officer of the transfer agent and registrar, respectively.

A change in the form of a security, of a transfer agency, or of a registrar, shall not be made without the approval of the committee.

§ 494. Forms of Certificates, Engraving, Etc., for Listed Securities.

All securities for which listing upon the exchange is requested, except as otherwise herein stated, must be engraved and printed in a manner satisfactory to the committee from at least two steel plates by an engraving company whose work the committee is authorized by the governing committee to pass upon; the name of the engraving company must appear upon the face of all securities and also upon the face of coupons and the title panel of each bond. Securities must bear a vignette upon their face.

Said plates shall be: (1) A border and tint plate from which should be made a printing in color underlying important portions of the face printing; (2) a face plate containing the vignettes and descriptive or promissory portion of the document, which should be printed in black or in black mixed with a color. The combined effect of the impression from these plates must be as effectual security as possible against counterfeiting.

The printing of securities must be in distinctive colors, to make classes and denominations readily distinguishable.

All certificates, except as otherwise stated herein, must provide for transfer and for registration with dates. When a corporation makes transfers of its shares in other cities, certificates shall be identical in color and form, except as to names of transfer agent and registrar; certificates interchangeably transferable must bear a legend reciting the right of transfer in New York and other cities.

The committee recommends that the text of securities shall provide for

transfer in person or by duly authorized attorney upon surrender of the security properly endorsed.

A change in the form of a security, transfer agency, registrar, or trustee of bonds, shall not be made without the approval of the committee.

The committee will object to any security upon which an impress is made by a hand stamp, except for a date or power of substitution.

§ 495. Additional Requirements for Listing Bonds.

(In addition to the general requirements above outlined, the following apply specifically to bonds.)

All bonds must be fully engraved and printed in a manner satisfactory to the committee; face of bonds and coupons must bear a vignette.

The text of bonds should recite conditions of issuance, tax exemption, terms of redemption (by sinking fund or otherwise), convertibility, default, interchangeability or exchangeability of coupon and registered bonds, and conversion into other securities.

Bonds, in the text and on the reverse, must recite payment of principal and interest in the borough of Manhattan, city of New York, and provide for transfer and registration. Coupons must recite payment of interest in the borough of Manhattan, city of New York, and tax exemption.

Registered bonds must carry a power of assignment in such form as the committee may approve.

The committee recommends that registered bonds be made interchangeable with coupon bonds.

Registered bonds interchangeable with coupon bonds shall bear a legend reciting numbers and denominations of coupon bonds, against which they are issued.

If coupon bonds of any denomination are interchangeable with coupon bonds of other denominations they shall contain such recital in the text and bear an appropriate legend on the reverse.

Registered bonds made such by detaching coupon sheets are not eligible for listing.

Forms of legends for bonds:

For coupon bonds of one denomination interchangeable with coupon bonds of other denominations:

"As provided in the indenture, coupon bonds of the denominations of \$1,000, \$500 or \$100, at any time outstanding, when surrendered with all unmatured coupons attached and upon the payment of charges, may be exchanged for an equal aggregate principal amount of coupon bonds of any other denomination of the same issue, of numbers not contemporaneously outstanding, with all unmatured coupons attached."

For a coupon bond of a thousand dollars exchangeable for coupon bonds of smaller denominations:

"The holder of this bond may, at his option, on surrender and cancellation and on payment of charges, as provided in the inden-

ture, receive in exchange coupon bonds of this issue for an amount aggregating \$1,000 in denominations of \$..... of numbers not contemporaneously outstanding."

For coupon bonds of smaller denominations exchangeable for a \$500 or a \$1,000 coupon bond:

"The holder of this bond may, at his option, on surrender and cancellation of this bond and others of the same issue aggregating \$500 or \$1,000 and on payment of charges, as provided in the indenture, receive in exchange a coupon bond of this issue of a number not contemporaneously outstanding, for the amount aggregated."

For registered bond(s) issued for coupon bond(s) of denomination(s) of less than \$1,000:

"This bond is issued in exchange for coupon bond(s) of this issue numbered in denominations of \$..... not contemporaneously outstanding, aggregating the face value hereof and coupon bond(s) of this issue bearing the said number(s) and of the same denomination(s) will be issued in exchange for this bond upon surrender, cancellation and payment of charges provided in the indenture."

For registered bond(s) issued for \$1,000 coupon bond(s):

"This bond is issued in exchange for coupon bond(s) of this issue numbered for \$1,000 (each), not contemporaneously outstanding, and coupon bond(s) of this issue bearing the said number(s) will be issued in exchange for this bond upon surrender, cancellation and payment of charges provided in the indenture."

§ 496. Additional Requirements for Listing Stock.

(In addition to the above general requirements, the following apply specifically to stock certificates.)

The border and tint plate for one hundred-share certificates of stock shall have said denomination engraved thereon in words and figures; the plates for smaller amounts shall bear some engraved device whereby the exact denomination of the certificate may be distinctly designated by perforation; also conspicuously upon the face "Certificate for less than one hundred shares."

Certificates for every class of stock shall recite preference of all classes.

Certificates of stock shall recite (1) ownership, (2) par value; (3) whether shares are full paid and (4) non-assessable; (5) preference as to dividends; (6) distribution of assets upon dissolution or merger; (7) terms of redemption; (8) convertibility; (9) voting power, or (10) other privilege; and (11) must bear the following legend:

This certificate is not valid until countersigned by the transfer agent, and registered by the registrar.

The following form is required upon the reverse of a certificate of stock:

For value received, hereby sell, assign and transfer unto shares of the *capital stock represented by the within certificate and do hereby irrevocably constitute and appoint attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated, 19...

In presence of

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever.

*On certificates without nominal or par value the word "capital" may be omitted.

§ 497. Additional Requirements for Listing Certificates of Deposit, Voting Trust Certificates, Etc.

In addition to the general requirements above outlined, certificates of deposit and voting trust certificates must conform in every particular to the specific requirements as to stock certificates, except that the descriptive portion of a certificate of deposit may be typed satisfactorily to the committee.

§ 498. Temporary Certificates or Receipts.

Temporary certificates or receipts must conform to the general requirements above outlined and to the specific requirements as to stock certificates, except that the text may be typed satisfactorily to the committee, and need not bear a vignette.

§ 499. Removals or Suspensions in Dealings of Listed Securities.

Whenever it shall appear that the outstanding amount of any security listed upon the stock exchange has become so reduced as to make inadvisable further dealings therein, the committee may direct that such security be removed from the list and further dealings therein prohibited.

"The governing committee may suspend dealings in the securities of any corporation previously admitted to quotation upon the exchange, or it may summarily remove any securities from the list."

CHAPTER XXXI.

PAYMENT OF SUBSCRIPTIONS.

- § 500. Liability to Corporation for Balance Due.
- § 501. Liability of Transferee for Balance Due.
- § 502. Time of Payment.
- § 503. Calls.
- § 504. Uniformity of Calls.
- § 505. Notice of Calls and Demand for Payment.
- § 506. Enforcement of Calls.
- § 507. Rights of Creditors of Corporation to Collect Unpaid Subscriptions.
- § 508. Trust-Fund Theory as Applied to Stock Subscriptions.
- § 509. Creditors May Recover Amount of Claims From One Stockholder.
- § 510. Creditors Must First Exhaust Remedy Against Corporation.

§ 500. Liability to Corporation for Balance Due.—As between the corporation and the immediate subscriber, no question can arise as to the liability of the latter for any balance which may be due for stock purchased for a definite amount. This is true even though the certificate which he has received indicate that more has been paid than actually has been paid, for, as between the original parties, mistakes may be corrected.¹ A stockholder's liability for calls upon his subscription though created by statute is contractual in its nature.²

§ 501. Liability of Transferee for Balance Due.—That a purchaser from the original subscriber who has notice of the actual amount paid, as a result either of collateral knowledge or of the fact that the amount is stated on the certificate, is liable for an actual balance due, is evident. He takes only what the face of the certificate indicates; and if there is no statement thereon as to the amount paid, the stock is, as to him, if he have no knowledge to the contrary, full paid. Such is the object of that provision in the statute of most states requiring partly paid stock certificates, if issued at all, to state the amount paid thereon.

One purchasing stock in a corporation and causing a transfer

¹ *Stockton C. H. & A. Works v. Houser*, 109 Cal. 1, 6, 41 Pac. 809.

² *Mandel v. Swan Land & Cattle Co.*, 154 Ill. 177, 40 N. E. 462, 45 A. S. R. 124, 27 L. R. A. 313.

thereof to be made to himself, and entered upon the corporate books, becomes substituted to his vendor, and therefore holds such stock on the same conditions and subject to the same obligations as such vendor held it prior to the transfer.³ A pledgee of stock who fails to have the books of the corporation indicate the fact rather than that he is an absolute owner thereof, is personally liable for unpaid subscriptions due on the stock.⁴

§ 502. Time of Payment.—As pointed out heretofore, payment for a conditional subscription to capital stock is due when the condition has been performed. When the time for payment, therefore, is fixed by the subscription contract,⁵ the articles of incorporation,⁶ or statute,⁷ payment is due without demand, and steps may at once be taken to sue for the amount due. A subscription, in writing, to the capital stock of a corporation, payable in installments, as called for by the directors, matures upon their call or demand,⁸ which should be made within a reasonable time.⁹ The statute of limitations runs from the time of making demand,¹⁰ and thereafter the sum due bears interest.¹¹ In the absence of a contract to make subscriptions payable at a future time, they become due and payable at once.¹² Where the contract of subscription provides for payment "at such times and in such manner as may be determined by the board of directors of said corporation to be hereafter chosen," a mere demand by the board and a refusal by the subscriber are sufficient to warrant suit for the amount due.¹³

³ *Perkins v. Cowles*, 157 Cal. 625, 108 Pac. 711, 137 A. S. R. 158, 30 L. R. A. (N. S.) 283; *Babcock v. Farwell*, 245 Ill. 14, 91 N. E. 683, 137 A. S. R. 284, 19 A. C. 74; *Park v. Rich* (Tex.), 212 S. W. 947.

⁴ *People's Home Sav. Bank*, 2 Cal. App. 445, 84 Pac. 329.

⁵ *Northwood Union Shoe Co. v. Pray*, 67 N. H. 435, 32 Atl. 770.

⁶ *Waukon & M. R. Co. v. Dwyer*, 49 Iowa 121.

⁷ *Phoenix Whsng. Co. v. Badger*, 67 N. Y. 294.

⁸ *Chubb v. Upton*, 95 U. S. 665, 24 L. Ed. 523.

⁹ *Robinson v. Pittsburgh & C. R. Co.*, 32 Pa. St. 334, 72 A. D. 792.

¹⁰ *Glenn v. Semple*, 80 Ala. 159, 60 A. R. 92; *Crofoot v. Thatcher*, 19 Utah 212, 57 Pac. 171, 75 A. S. R. 725.

¹¹ *McCoy v. World's Columbian Exposition*, 186 Ill. 356, 57 N. E. 1043, 78 A. S. R. 288.

¹² *Johnson v. Albany & S. R. Co.*, 54 N. Y. 416, 13 A. R. 607.

¹³ *California Southern Hotel Co. v. Callender*, 94 Cal. 120, 127, 28 A. S. R. 99, 29 Pac. 859.

§ 503. **Calls.**—The word “call” is often confused with and used indiscriminately with the word “assessment.” This is due to the fact that in many states, both calls and assessments are subject to, and the enforcement of both is regulated by, similar laws. A call, however, is properly a demand that a certain percentage of the balance due on partly paid stock be paid; whereas an assessment is a levy of a uniform tax upon paid up stock. Where no arrangement is made for determining the time for payment, or it is provided in the contract of subscription that “the balance due is payable upon the call of the board of directors,” a “call” by the latter body is a condition precedent to the right of collection.¹⁴ The necessity in any particular case for a call on corporate stock is not open to question by the stockholders, but must be determined by the directors themselves.¹⁵ The directors need not show that calls are made for a corporate purpose, or that the business of the corporation required them to be made and paid; and this whether the statute confers such powers, or whether it is entirely silent on the subject.¹⁶ But a call made by a court, where there is not personal service of process on the stockholders, is not conclusive evidence of its own necessity, and they may resist it if the purpose for which it was made was illegal and unauthorized, without first having it vacated by judicial proceedings.¹⁷ If directors neglect or refuse to call in unpaid subscriptions necessary to pay the claims of creditors, equity will take jurisdiction and make the requisite calls.¹⁸

§ 504. **Uniformity of Calls.**—As in the case of assessments calls must be uniform in their effect upon the stockholders in general. In determining, however, whether or not a particular call is uniform note must be taken of the extent to which and how much of the outstanding stock has been full paid.

A call cannot be made which will affect only a portion of those

¹⁴ *Ventura & O. V. Ry. Co. v. Hartman*, 116 Cal. 260, 263, 48 Pac. 487; *Braddock v. Philadelphia M. & M. R. Co.*, 45 N. J. Law 363; *Williams v. Taylor*, 120 N. Y. 244, 24 N. E. 288; *Spangler v. Indiana, etc., R. Co.*, 21 Ill. 276.

¹⁵ *Penobscot R. Co. v. White*, 41 Me. 512, 66 A. D. 257.

¹⁶ *Budd v. Multnomah St. Ry. Co.*, 15 Ore. 413, 15 Pac. 659, 3 A. S. R. 169.

¹⁷ *Bank of China, etc., v. Morse*, 168 N. Y. 458, 61 N. E. 774, 85 A. S. R. 676, 56 L. R. A. 139.

¹⁸ *Hawkins v. Glenn*, 131 U. S. 319, 9 S. C. R. 739, 33 L. Ed. 184.

who stand in the same class as to the amount of unpaid subscription, but if upon a portion of the stock all or half should have been paid, and nothing or but a small amount had been paid on the other portion, an assessment could be properly levied on the stock which had made the smaller payments, in order to equalize the contributions of all the stockholders. This is the only mode of assessment as to different classes of stock which would not be violative of the rule that all assessments on stocks must be uniform.¹⁹ Thus, calls may justly be made exclusively upon those stockholders who have paid the least (say, one-fourth) upon their stock; and, as the level of payment rises, calls may be extended to those who have paid one-half upon their stock, the calls being uniformly made with the object of enforcing full payment by all, gradually but equitably.²⁰

§ 505. Notice of Calls and Demand for Payment.—Where the contract of subscription or, as is more frequently the case, the statutes or articles of incorporation require that notice of calls be given the subscriber or that a demand for payment be made upon him, the authorities are uniform in holding that such provisions are mandatory, and an action cannot be brought on the subscription until the requirement has been complied with.¹ However, demand need not be made before suing to recover a call, where notice of the call is properly given.² By the weight of authority unless notice of calls or a demand for payment is required by the charter or by-laws none need be given. The subscribers, it is said, are bound to take notice of all corporate acts.³

¹⁹ *O'Dea v. Hollywood Cem. Ass'n*, 154 Cal. 53, 70, 97 Pac. 1; *Imperial Land and Stock Co. v. Oster*, 34 Cal. App. 776, 168 Pac. 1159; *Geary St. P. & O. R. Co. v. Rolph*, 189 Cal. 59, 207 Pac. 539.

²⁰ *Brockway v. Gadsden Mineral Land Co.*, 102 Ala. 620, 15 So. 431; *Fey v. Peoria Watch Co.*, 32 Ill. App. 618.

¹ *Nashua Savings Bank v. Anglo-American Land, Mortgage & Agency Co.*, 189 U. S. 221, 23 S. C. R. 517, 47 L. Ed. 782; *Stephens v. Lemoore Canal & Irrigation Co.*, 22 Cal. App. 579, 135 Pac. 707; *Bergman v. Evans*, 92 Wash. 158, 158 Pac. 961, A. C. 1918C 848; *North Milwaukee Townsite Co. v. Bishop*, 103 Wis. 492, 79 N. W. 785, 45 L. R. A. 174.

² *Imperial Land and Stock Co. v. Oster*, 34 Cal. App. 776, 168 Pac. 1159.

³ *Swan v. Pittsburg Driving Park & Fair Ass'n*, 6 Kan. App. 572, 51 Pac. 583; *Germania Iron Min. Co. v. King*, 94 Wis. 439, 69 N. W. 181, 36 L. R. A. 51.

§ 506. **Enforcement of Calls.**—In many states, calls are made and may be enforced in the same manner as assessments. That assessment is the proper method to collect unpaid subscriptions is well settled. A corporation may, however, provide in its by-laws for other than the statutory method of collecting calls for unpaid subscriptions.⁴

§ 507. **Rights of Creditors of Corporation to Collect Unpaid Subscriptions.**—Debts due to a corporation constitute a portion of its assets, and may be reached by creditors. Among these are unpaid subscriptions to stock, and these may sometimes be collected by creditors when the corporation itself has released them, or in some way deprived itself of that right. And as to creditors the obligation is unconditional, although the corporation has accepted a qualified liability.⁵ In accordance with the trust fund doctrine, it has been held by a great majority of jurisdictions that as between shareholders and creditors the rights of the creditors cannot be defeated by any contract between the corporation and its stockholders, or by any device short of actual payment of the par value of such stock.⁶

§ 508. **Trust-Fund Theory as Applied to Stock Subscriptions.**—This is the so-called “trust-fund theory” now generally recognized and invoked for the protection of the creditors of the corporation.⁷ The principal office of the trust fund doctrine is to preserve the assets of a corporation as a fund for the payment of the corporate debts, when such assets or some part thereof have been wrongfully diverted by the officers and agents of the corporation.⁸

The capital stock of a corporation is looked upon as a trust fund, some of which may be in the hands of the individual stockholders

⁴ *People's Home Sav. Bank v. Sadler*, 1 Cal. App. 189, 81 Pac. 1029.

⁵ *Vermont, etc., Co. v. Declez Granite Co.*, 135 Cal. 579, 583, 67 Pac. 1057, 87 A. S. R. 143, 56 L. R. A. 728.

⁶ *Upton v. Tribilcock*, 91 U. S. 45, 23 L. Ed. 203; *Vermont Marble Co. v. Declez Granite Co.*, 135 Cal. 579, 67 Pac. 1057, 87 A. S. R. 143, 56 L. R. A. 728.

⁷ *Judge Story in Wood v. Dummer*, Fed. Cas. No. 17944, 3 Mason 308.

⁸ *Upham v. Bramwell*, 105 Ore. 597, 209 Pac. 100, 210 Pac. 706, 25 A. L. R. 919.

in the form of unpaid subscriptions to be held by them for the benefit of those who deal with the corporation relying upon the existence of this fund.⁹ Creditors are not concerned, therefore, with any arrangements which the corporation may have made with its stockholders for the payment of their stock. The capital still exists whether it be in the hands of the corporation in the shape of full paid stock or partly in the hands of the stockholders as unpaid portions of the subscription price.

It is on this theory, therefore, that creditors may inquire into the adequacy of the consideration paid for the stock even where, as pointed out heretofore, the corporation itself or other stockholders may not complain.

Stockholders holding stock which was issued in the first place for less than par, or for property or services which were grossly overvalued may be subjected to liability to the creditors of the corporation for the balance which should justly have been paid for the stock. It matters not that the present holder is an innocent purchaser for full value.¹⁰

The fact that the stock is issued as fully paid up does not estop or bind the creditor, and in such a case, if it is not fully paid up, the creditor may prove the fact, and recover enough of the portion that is unpaid to satisfy his debt. No subterfuge or device by which it is made to appear as fully paid up when it is not will enable the stockholder to avoid this liability.¹¹

The creditor's rights are not impaired by any release given by the corporation,¹² or by any other acts of the officers of the corporation as a result of which the corporation itself is estopped from claiming

⁹ *Burke v. Maze*, 10 Cal. App. 206, 101 Pac. 440; *Keith v. Kilmer*, 261 Fed. 733, 9 A. L. R. 1287; *Good v. Ferguson & Wheeler Land, Lbr. & H. Co.*, 107 Ark. 118, 153 S. W. 1107, A. C. 1915A 544; *Niles v. Olszak*, 87 Ohio St. 229, 100 N. E. 820, A. C. 1913E 1020; *Crozier v. Menzies Shoe Co.*, 103 Kan. 565, 175 Pac. 376.

¹⁰ *Harmon v. Page*, 62 Cal. 448; *Baines v. Babcock*, 95 Cal. 581, 27 Pac. 674, 30 Pac. 776, 29 A. S. R. 158; *Vermont Marble Co. v. Declez Granite Co.*, 135 Cal. 579, 67 Pac. 1057, 87 A. S. R. 143, 56 L. R. A. 728; *Coleman v. Howe*, 154 Ill. 458, 39 N. E. 725, 45 A. S. R. 133; *Kelly v. Clark*, 21 Mont. 291, 53 Pac. 959, 69 A. S. R. 668, 42 L. R. A. 621.

¹¹ *Herron Co. v. Shaw*, 165 Cal. 668, 671, 133 Pac. 488, A. C. 1915A 1265.

¹² *Schmidt v. Chester Shoe Mfg. Co.*, 25 Pa. Co. Ct. 49; *South Bend Toy Mfg. Co. v. Pierre Fire & Marine Ins.*, 4 S. D. 173, 56 N. W. 98.

the balance due on the stock.¹³ A creditor, however, who expressly waives all right to resort to such unpaid subscriptions is bound by his waiver.¹⁴

The doctrine that unpaid subscriptions to the capital stock of a corporation are a trust fund for creditors has no application until the corporation becomes insolvent.¹⁵

§ 509. Creditors May Recover Amount of Claims From One Stockholder.—The liability of a stockholder to pay the full amount remaining unpaid upon his stock is not conditional upon whether other stockholders have made payments; nor is it limited in any way by the other debts of the corporation. A creditor, having obtained judgment against the corporation which remains unsatisfied, may single out one stockholder and compel him to pay the entire balance remaining unpaid on his stock in satisfaction of the judgment, if the whole of it be required.¹⁶ In this respect this differs from the statutory liability of all stockholders for the debts of the corporation, which may be enforced only proportionately against each stockholder. The reason is obvious, the unpaid portion of the subscription being an asset of the corporation. A stockholder, however, who thus pays more than his share of a corporate debt may seek proportionate contributions from the other stockholders. Thus, a stockholder who is himself a creditor, need not set off his unpaid portion of the subscription price against his debt, but, having set off his share of the liability, may sue any of the other stockholders for a sufficient amount of their unpaid subscriptions to pay his claim.¹⁷

§ 510. Creditors Must First Exhaust Remedy Against Corporation.—On the other hand, creditors cannot seek payment for

¹³ *Perkins v. Cowles*, 157 Cal. 625, 629, 108 Pac. 711, 137 A. S. R. 158, 30 L. R. A. (N. S.) 283.

¹⁴ *Robinson v. Bidwell*, 22 Cal. 379.

¹⁵ *Fear v. Bartlett*, 81 Md. 435, 32 Atl. 322, 33 L. R. A. 721; *Keith v. Kilmer*, 261 Fed. 733, 9 A. L. R. 1287; *Rice v. Thomas*, 184 Ky. 168, 211 S. W. 428.

¹⁶ *Hatch v. Dana*, 101 U. S. 205, 25 L. Ed. 885; *Baines v. Babcock*, 95 Cal. 581, 27 Pac. 674, 30 Pac. 776, 29 A. S. R. 158; *Walter v. Merced Academy Ass'n*, 126 Cal. 582, 59 Pac. 136; *Blood v. La Serena Land & W. Co.*, 150 Cal. 764, 89 Pac. 1090.

¹⁷ *Blood v. La Serena Land & W. Co.*, 150 Cal. 764, 89 Pac. 1090.

unpaid subscriptions before establishing the insolvency of the corporation. Independent suits may not be prematurely brought against stockholders as in the case of the statutory liability just mentioned. The balance due for underpaid stock is immediately payable upon the establishment of the insolvency of the corporation, any provisions of the contract of subscription to the contrary. Although the latter may have contained a stipulation that payments should be made only upon call of the corporation, a call is unnecessary at such a time.¹⁸

Any creditor who has exhausted his legal remedies against a corporation may maintain an action against the stockholders to recover, for the benefit of all creditors who may desire to come in and be made parties, the amount due upon unpaid subscriptions for stock, when the corporation neglects or refuses to collect the same.¹⁹ A single creditor may maintain suit.²⁰

A creditor is not obliged to give notice to other creditors, or obtain their consent to the commencement of a suit for the benefit of himself and other creditors who may choose to come in, establish their claims, and contribute to the expense of the suit, to reach the unpaid subscription of a stockholder.¹

¹⁸ *Hatch v. Dana*, 101 U. S. 205, 25 L. Ed. 885; *Allen v. Montgomery R. Co.*, 11 Ala. 437; *Daggett v. Southwest Packing Co.*, 155 Cal. 762, 103 Pac. 204.

¹⁹ *Baines v. Babcock*, 95 Cal. 581, 27 Pac. 674, 30 Pac. 776, 29 A. S. R. 158; *Ryerson & Son v. Peden*, 303 Ill. 171, 135 N. E. 423, 24 A. L. R. 1273.

²⁰ *Flash v. Conn.*, 109 U. S. 371, 3 S. C. R. 263, 27 L. Ed. 966.

¹ *Thompson v. Reno Savings Bank*, 19 Nev. 103, 7 Pac. 68, 3 A. S. R. 797.

CHAPTER XXXII.

TRANSFER OF STOCK.

- § 511. Right to Transfer Stock.
- § 512. No Right to Transfer Membership.
- § 513. Law Governing Transfer.
- § 514. Method of Transfer.
- § 515. By-Laws Restricting Transfers.
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- § 519. Transfer as Affecting Corporation.
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- § 537. Stolen and Lost Certificates.
- § 538. Estoppel of Owner to Deny Authority for Transfer.
- § 539. Precautions to Be Taken by Corporation Officers.
- § 540. Transfers by Trustees—Duty of Corporation Officers.
- § 541. Transfers by Non-Resident Stockholders.
- § 542. Wrongful Transfers by the Corporation.

§ 511. **Right to Transfer Stock.**—The right of a stockholder in a corporation to transfer to another the whole or a portion of his interest therein is one of the most convenient and valued features of the corporate form of commercial enterprise. Whatever formal regulations may be made by statute or by-laws covering the act of transfer are not designed to prevent or to discourage such transfer, but

rather to protect the immediate parties to the transaction, safeguard the interests of the corporation, and preserve the rights of creditors.

The purpose of the statutes requiring a transfer upon the books of the corporation is to prevent fraudulent transfers and to protect the corporation in determining the question of membership, the right to vote, the right to participate in the management of the corporation, and the payment of dividends.¹

The power of disposing of stock, like the power of disposing of any other property, is a common right, and necessarily attaches to ownership.² Where there is a valid sale of stock, and a *bona fide* owner presents his certificate to the company and demands a registration of his shares, the corporation is legally bound to recognize his ownership and to make due transfer of such stock, in his name, on its books.³

§ 512. No Right to Transfer Membership.—The rights, however, of a member of a benevolent corporation are of a personal nature; and the law assumes that the personality of the member was a part of the consideration for his admission to membership. Most states, therefore, provide by statute that no member, or his legal representative, may dispose of or transfer any right or privilege conferred on him by reason of his membership in such corporation.

§ 513. Law Governing Transfer.—It seems to be a well recognized rule that the method of transferring stock in a corporation is governed by the law of the state under which it was incorporated, although the transfer is made in another state.⁴ However, since a state may impose such conditions as it sees fit on the right of a foreign corporation to do business within its borders, a corporation doing business in a state other than that in which it was incorporated is subject to the provisions of its laws regulating the trans-

¹ Masury v. Arkansas Nat. Bank, 93 Fed. 605, 35 C. C. A. 476; Bleakley v. Candler, 169 N. C. 16, 84 S. E. 1039, A. C. 1917A 425-427.

² New England Trust Co. v. Abbott, 162 Mass. 148, 38 N. E. 438, 27 L. R. A. 271.

³ Rowe v. Border City Garnetting Co., 40 R. I. 394, 101 Atl. 223.

⁴ State v. Dunlap, 28 Idaho 784, 156 Pac. 1141, A. C. 1918A 546; Husband v. Linehan, 168 Ky. 304, 181 S. W. 1089, A. C. 1917D 954.

fer of shares by foreign corporations.⁵ The law of the state in which the corporation was created will govern in determining the validity of unrecorded transfers as against attaching creditors of the transferer.⁶

§ 514. Method of Transfer.—The right to transfer stock is sometimes given by statutes providing that whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.⁷ It is not essential to a transfer of shares of stock that a certificate representing such shares be delivered to the purchaser.⁸ A “fly power” is a written assignment in blank, whereby, upon being attached to a stock certificate, the stock may be transferred.⁹

§ 515. By-Laws Restricting Transfers.—While the corporation may, in its by-laws, or established usage, reasonably regulate the method of transferring its shares, yet it cannot prevent such transfers, or prescribe to whom the owner may or may not sell them, or upon what terms.¹⁰ And a by-law which provides that a transfer of stock shall be invalid unless approved by the board of directors or other representatives of the corporation is an invalid restraint upon the alienation of the corporate stock.¹¹ However, a by-law which merely prescribes formalities to be observed in the transfer of

⁵ *London, Paris & American Bank, Ltd., v. Aronstein*, 117 Fed. 601, 54 C. C. A. 663.

⁶ *Dean Rapid Tel. Co. v. Howell*, 162 Mo. App. 100, 144 S. W. 135.

⁷ *Litchfield v. Henson Oil Co.*, 53 Okla. 550, 157 Pac. 137.

⁸ *Mitchell v. Beachy*, 104 Kan. 445, 179 Pac. 365.

⁹ *Carlisle v. Norris*, 215 N. Y. 400, 109 N. E. 564, A. C. 1917A 429.

¹⁰ *Chouteau Spring Co. v. Harris*, 20 Mo. 482; *Sargent v. Franklin Ins. Co.*, 8 Pick. (Mass.) 90, 19 A. D. 306; *Quiner v. Marblehead Social Ins. Co.*, 10 Mass. 476; *United States v. Vaughan*, 3 Binn. (Pa.) 394, 5 A. D. 375.

¹¹ *Miller v. Farmers' Milling & Elevator Co.*, 78 Neb. 441, 110 N. W. 995, 126 A. S. R. 606.

stock is not an unreasonable restriction and is not necessarily invalid.¹² A by-law providing for a small fee to cover the expense involved in a transfer is valid and may be enforced.¹³

§ 516. Effect of the Transfer as Between the Parties.—The endorsement of the certificate of stock is simply a transfer in writing and subjects the parties to the transaction to all of the features of the law of contracts. It should be noted, however, that a delivery is generally necessary to complete the transfer and deprive the party disposing of his stock of all further claim thereto. This is an important consideration in connection with the rights of *bona fide* holders of lost or stolen certificates.¹⁴

§ 517. Specific Performance of Contract to Transfer Stock.—Broadly speaking, the question whether or not a contract for the sale of stock of a private corporation will be specifically enforced depends upon the adequacy of the remedy at law. Consequently, the rule is that such a contract will not be specifically enforced where the remedy at law is adequate, but that specific performance will be decreed where there are special or peculiar circumstances which would render a remedy at law inadequate, provided, of course, that the contract is valid and binding.¹⁵ Contracts for the purchase or sale of corporate stock will be specifically enforced where there is some special reason for the purchaser obtaining the same, or where the shares are limited or not easily attainable, or where the value cannot be readily ascertained, or where, because of other special or peculiar circumstances, a remedy at law would not be adequate.¹⁶

Generally speaking, where the corporate stock which is the subject of a contract of sale of which specific performance is sought is

¹² Longyear v. Hardman, 219 Mass. 405, 106 N. E. 1012, A. C. 1916D 1200.

¹³ Giesen v. London & Northwest Amer. Mtge. Co. (C. C. A.), 102 Fed. 584, 42 C. C. A. 515.

¹⁴ Johnston v. Laflin, 103 U. S. 800, 26 L. Ed. 532; Parker v. Bethel Hotel Co., 96 Tenn. 252, 34 S. W. 209, 31 L. R. A. 706.

¹⁵ Ellis v. Treat, 236 Fed. 120, 149 C. C. A. 330; Gilfallan v. Gilfallan, 168 Cal. 23, 141 Pac. 623, A. C. 1915D 784; McCullough v. Clark, 81 W. Va. 743, 95 S. E. 787.

¹⁶ Eckley v. Daniel, 193 Fed. 279; Riverside Land Co. v. Jarvis, 174 Cal. 316, 163 Pac. 54; Nason v. Barrett, 140 Minn. 366, 168 N. W. 581; Deitz v. Stephenson, 51 Ore. 596, 95 Pac. 803.

of unknown and of not easily ascertainable value, a suit for the specific performance thereof may be maintained, the remedy at law in such a case being regarded as inadequate.¹⁷

There is authority to the effect that a contract for the sale of corporate stock will be specifically enforced to enable the purchaser to gain control of the corporation.¹⁸ Contracts for the purchase of stock have been enforced at the instance of the vendor, in order to relieve him from burdens attaching to his ownership of the stock.¹⁹

§ 518. Fictitious Sales of Stock.—On the principle that a gambling contract will not be enforced, the courts will not compel a performance of a contract such as is frequently entered into at a stock exchange whereby stock is bought or sold only in name, the parties exchanging only the differences in the market prices of the stocks as they fluctuate.

In some states, one who has paid in settlement of any such contracts, may recover the amount paid in a suit for that purpose. In others, however, the courts are not permitted to afford relief to either of the parties to such a transaction. Equity will not enforce a contract for the sale of corporate stock where the same is regarded as against public policy.²⁰

§ 519. Transfer as Affecting Corporation.—In order, however, that the corporation may be compelled or authorized to cease to recognize the one and begin to recognize the other as the owner of the stock with all the rights and liabilities thereto attached, the party transferring the stock must authorize in some manner the officials of the corporation to note the details of the transfer upon the books of the corporation, and such note must be made.

The corporation has no right to inquire into the merits of the transaction as between the transferor and transferee. It has simply a plain ministerial duty to perform of making a clerical record of

¹⁷ *Rimes v. Rimes*, 152 Ga. 721, 111 S. E. 34, 22 A. L. R. 1030; *Smurr v. Kamen*, 301 Ill. 179, 133 N. E. 715, 22 A. L. R. 1023; *Newton v. Wooley*, 105 Fed. 541; *Amsler v. Cavitt* (Tex. Civ. App.), 210 S. W. 766.

¹⁸ *Nason v. Barrett*, 140 Minn. 366, 168 N. W. 581; *O'Neill v. Webb*, 78 Mo. App. 1.

¹⁹ *Austin v. Gillaspie*, 54 N. C. (1 Jones, Eq.) 261.

²⁰ *Foll's Appeal*, 91 Pa. 434, 36 A. R. 671; *Northern C. R. Co. v. Walworth*, 193 Pa. 207, 74 A. S. R. 683, 44 Atl. 253.

the title to so many shares of its capital stock. So when a demandant for a transfer presents a *prima facie* case, the corporation is not justified in inquiring further. Neither should it refuse on its own motion to make a transfer of stock.¹

§ 520. Written Power of Attorney to Transfer Stock.—The inconvenience of resorting to the office of the corporation in every instance of a sale of stock is avoided, in practice, however, by the vendor of the stock executing a combined assignment and power of attorney in blank, and delivering it with the certificate to the purchaser. This may be, and usually is, printed upon the back of the certificate. The vendee of the stock wishing to complete the transfer and become a full fledged stockholder of record, then writes his own name as transferee in the proper blank, and also in the proper blank the name of himself, the secretary of the company, or of some other person as the attorney in fact to execute the transfer upon the transfer book. For the convenience of all parties, the name of the secretary is very frequently used. The person so designated then surrenders the certificate to the secretary, who cancels it and issues to the new holder a new certificate, or certificates, in the latter's own name, representing the same interest as that surrendered. When the new certificate is issued, the person to whom it has been issued should be required to sign a receipt for it on the line left for that purpose on the stub. An entry is then made by the secretary or bookkeeper in the transfer book, showing the transaction.

Simultaneously with the entry in the transfer book and issue of the new certificate, the proper entries should be made on the stubs of the stock certificate book. When a certificate book is ordered, the purchaser should see that an assignment in blank and power of attorney are printed in proper form on the back. This greatly facilitates dealing in the shares represented by the certificates, besides subserving the convenience of the secretary. The following is a common form:

§ 521. Assignment and Power of Attorney to Transfer Stock.

For value received, I hereby sell, assign and transfer unto James Redmond the twenty (20) shares of the capital stock represented by the within

¹ *Mundt v. Commercial Nat. Bank*, 35 Utah 90, 99 Pac. 454, 136 A. S. R. 1023.

certificate, and do hereby irrevocably constitute and appoint J. F. Weston to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

HENRY SEULE.

Dated August 25, 1926.

In presence of

SAMUEL TRENTON.

If the blank assignment and power of attorney are legally sufficient—and this should be seen to before the printing is done or the stock certificate book purchased—the secretary will thus be relieved of all risk on questions as to their legal sufficiency, and delay may be avoided, when application is made to have a transfer entered and a new certificate issued. The owner of the certificate usually, especially where the stock is freely dealt in, or is active on the exchanges, merely signs, leaving the blanks unfilled. The certificate then does not have to be surrendered, and a new one issued for each transfer. The stock may thus be sold an indefinite number of times without a resort to the office of the corporation, a mere delivery of the certificate being all that is necessary to consummate the sale. If the certificate finally reaches the hands of one who prefers to retain the stock as a permanent investment, he may fill in all the blanks and complete the transfer on the books as above described.

It is not necessary, however, that the name of anyone be inserted as attorney-in-fact. If the certificate properly signed be presented to the secretary, he will write in his own name as attorney-in-fact. It is necessary in such case only that the secretary be satisfied of the genuineness of the signature of the original owner. If he be not satisfied he may require proof and thus cause trouble and delay. Also, any person to whom the certificate is offered for sale, may question the genuineness of the signature. This may be avoided if, when the first transfer is made, the owner acknowledges his signature before a notary public; and for this purpose a blank form for a notarial acknowledgment may follow the other printed matter on the back of the certificate.

The common practice of passing the title to stock by delivery of the certificate, with blank assignment and power, has been repeatedly shown and sanctioned in cases which have come before our courts.²

² Brittan v. Oakland Bank of Savings, 124 Cal. 282, 57 Pac. 84, 71 A. S. R. 58; Stowe v. Harvey, 241 U. S. 199, 36 S. C. R. 541, 60 L. Ed. 953; Baker

§ 522. **Right of Corporation Officers to Refuse to Enter a Transfer.**—Generally speaking, the officers of a corporation may rightfully refuse for the time being a requested registry of stock when notified to do so by a third person who claims some interest in the stock which might be lost or injuriously affected by the transfer, and in the presence of such conflicting claims it is the privilege and duty of the corporation or its officers, if there be a reasonable doubt as to the respective rights of the contending claimants, to refuse, or, rather, delay registry to either party until the lapse of a reasonable time, within which the merits of the controversy may be determined by an independent investigation of the corporation or, if necessary, by the institution of appropriate proceedings in the courts. The law, however, does not require or permit the officers of a corporation to assume the functions of a court of justice and by their decision forever conclude the rights of the contending claimants. If within a reasonable time resort is not had to the courts for the determination of the controversy, either by the corporation itself or by the parties immediately involved, it becomes the duty of the corporation or its officers to register the disputed stock in the name of the first claimant. Any other rule would tend to permit the corporation of its own motion, or at the mere instigation of third parties, to arbitrarily deprive a person presenting a *prima facie* right to the disputed stock from the possession and benefits thereof.³

In the absence of any express statutory or charter authority, a corporation cannot justify an absolute refusal to transfer stock on its books to the holder of certificates duly assigned, on the ground that it has been requested not to make such transfer by the former holder.⁴ A corporation, however, may refuse to make a transfer to save itself from loss or to protect itself against fraud; but such

v. Atlantic Coast Line R. Co., 173 N. C. 365, 92 S. E. 170, L. R. A. 1917E 266; Litchfield v. Henson Oil Co., 53 Okla. 550, 157 Pac. 137, L. R. A. 1917A 54; Casey v. Kastel, 237 N. Y. 305, 142 N. E. 671, 31 A. L. R. 995.

³ Spangenberg v. Nesbitt, 22 Cal. App. 274, 278, 134 Pac. 343; O'Neil v. Wolcott Min. Co., 174 Fed. 527, 98 C. C. A. 309, 27 L. R. A. (N. S.) 200; Dickinson v. Griggsville Nat. Bank, 209 Ill. 350, 70 N. E. 593; State Ins. Co. v. Gennett, 2 Tenn. Ch. 100.

⁴ State ex rel. Townsend v. McIver, 2 S. C. 25; Skinner v. Ft. Wayne T. H. & S. W. R. Co. 58 Fed. 55.

refusal must be based upon a substantial legal or equitable right and cannot be justified upon the mere requirements of a by-law.⁵

A corporation is justified and may refuse to make a transfer of stock on its books when it has a valid lien against the stock, or if it has good reasons to believe that a fraud or unlawful design is intended, in an illegal manner against it, and where a third person has notified the company of a better right.⁶

§ 523. Remedies of Stockholder in Case of Refusal to Make Transfer.—Where a corporation wrongfully refuses to transfer stock it has been held that the law gives the stockholder a choice of two remedies, legal and equitable. He may treat the refusal to transfer the shares as a conversion, and sue the corporation for their value either in trover or in assumpsit, or he may assert his ownership of the shares irrespective of the registry and sue for dividends upon them.⁷ After the certificate has been issued an assignee of shares represented by it may maintain an action for damages against the corporation wrongfully refusing to make the proper transfer on its books.⁸ The refusal to make the transfer is treated for the purposes of the action, as a conversion of the shares,⁹ the refusal of the secretary being treated as the refusal of the corporation. The measure of damages in such a case is the value of the stock at the time of the refusal. In such an action, the corporation would have no

⁵ *Tafft v. Presidio & Ferries R. Co.*, 3 Cal. Unrep. 152, 22 Pac. 485; *Helm v. Swiggett*, 12 Ind. 194; *Holbrook v. New Jersey Zinc Co.*, 57 N. Y. 616.

⁶ *Isbell v. Graybill*, 19 Colo. App. 508, 76 Pac. 550; *Russell v. Easterbrook*, 71 Conn. 50, 40 Atl. 905.

⁷ *Travis v. Knox Terpezone Co.*, 215 N. Y. 259, 109 N. E. 250, A. C. 1917A 387, L. R. A. 1916A 542.

⁸ *Kimball v. Union Water Co.*, 44 Cal. 173, 13 A. S. R. 157; *Ralston v. Bank of Cal.*, 112 Cal. 208, 44 Pac. 476; *Huggins v. Mil. Brew. Co.*, 10 Wash. 579, 39 Pac. 152; *State v. Guerrero*, 12 Nev. 105, 107; *In re Argus Print. Co.*, 1 N. D. 434, 48 N. W. 347, 26 A. S. R. 639, 12 L. R. A. 781.

⁹ *Baltimore City Pass Ry. Co. v. Sewell*, 35 Md. 238, 6 A. R. 402; *Scripture v. Francetown Soapstone Co.*, 50 N. H. 571; *Arnold v. Suffolk Bank*, 27 Barb. (N. Y.) 424; *Bank of America v. McNeil*, 10 Bush (Ky.) 54; *Sargent v. Franklin Ins. Co.*, 8 Pick. (Mass.) 90, 19 A. D. 306; *Helm v. Swiggett*, 12 Ind. 194; *Merchants Nat. Bank v. Richards*, 6 Mo. App. 454; *German Union Building Ass'n v. Sendmeyer*, 50 Pa. St. 67; *Protection Life Ins. Co. v. Osgood*, 93 Ill. 69.

right to end its obligation by finally consenting to the transfer on its books.¹⁰

§ 524. Mandamus to Compel Transfer.—It is well settled that mandamus will not ordinarily lie to compel a transfer of corporate stock upon the books of a private corporation, in the absence of statutes enlarging the scope of the remedy by mandamus.¹¹ However, statutes of some states have been construed to permit a proceeding of mandamus to compel the transfer of shares.¹²

§ 525. Penalty for Refusal to Enter Transfer.—The statutes of many states provide a heavy pecuniary penalty for the refusal of a corporation officer to transfer stock on the books in a proper case. In California it is provided that such officer shall be subject to a penalty of four hundred dollars, to be recovered as liquidated damages, in an action brought against him by the person aggrieved.¹³ Such a penalty, however, may not be exacted where the officer has merely exercised the precautions mentioned in the preceding sections.¹⁴

§ 526. Disposal of Surrendered Certificates.—Precaution sufficient to prevent fraudulent use of surrendered certificates should be taken by the secretary, for a *bona fide* purchaser from the owner of the old certificate would be entitled to recognition as a stockholder.¹⁵ In addition to stamping the word, "Canceled," upon its face, he should, with a pen, mark off the signatures to the certi-

¹⁰ *Ralston v. Bank of Cal.*, 112 Cal. 208, 214, 215, 44 Pac. 476.

¹¹ *Spangenberg v. Western Heavy Hardware & Iron Co.*, 166 Cal. 284, 135 Pac. 1127; *Clarke v. Hill*, 132 Mich. 434, 93 N. W. 1044; *People v. Utah Gold & Copper Mines Co.*, 135 App. Div. 418, 119 N. Y. Supp. 852; *Davidson v. Alameda Mines Co.*, 66 Ore. 412, 134 Pac. 782, 48 L. R. A. (N. S.) 847.

¹² *Trinkle v. Garden City Land & Immigration Co.*, 109 Kan. 290, 198 Pac. 947; *State ex rel. Smit v. Lafayette Bldg. Ass'n*, 147 La. 526, 85 So. 228; *Citizens' Nat. Bank of Port Allegheny v. Consolidated Glass Co.*, 83 W. Va. 1, 97 S. E. 689; *Capital Petroleum Co. v. Haldeman*, 66 Colo. 265, 180 Pac. 758; *Bailey v. Strohecker*, 38 Ga. 259, 95 A. D. 388.

¹³ California Civil Code, sec. 324. See *Mancini v. Setaro*, 69 Cal. App. 748, 232 Pac. 495; *Bowring v. Prime*, 46 Cal. App. 538, 189 Pac. 701.

¹⁴ *Spangenberg v. Nesbitt*, 22 Cal. App. 274, 134 Pac. 343.

¹⁵ *New York & N. H. R. Co. v. Schuyler*, 34 N. Y. 30; *South Bend First Nat. Bank v. Lanier*, 11 Wall. (U. S.) 369, 20 L. Ed. 172.

cate, and then attach it with mucilage or some other adhesive substance to the stub from which it was originally detached, to serve as a voucher.

§ 527. Transfers Through Stock Registrars and Transfer Agents.—An agent, designated the stock registrar or transfer agent, is provided for by some of the large corporations whose shares may be widely scattered in the hands of many persons and actively dealt in upon the stock exchanges.

Often a trust company, in the city where the stock is so dealt in, is selected for that office, and given possession and control of all the stock books of the corporation to enable it to perform the duties of that office correctly and expeditiously. It has the advantage of preventing fraud in the issue and disposal of the stock, and renders an overissue improbable, thus inspiring public confidence among those holding, or who may be disposed to invest in, the stock. The registrar supervises the surrender, transfer, issue and cancellation of certificates, keeps a record of every transaction properly brought to his attention, and authenticates every certificate issued, and thus guarantees its proper issue and record.

In case the laws of the state by which the corporation was created requires its principal place of business to be maintained therein, and its books to be there kept, the registrar, though in another state, may be furnished a copy of the original stock books, and from day to day transmit to the home office a statement of transactions in the stock from which the proper entries may be made in the original books of the corporation.

§ 528. Issue of Two or More Certificates in Lieu of One Previously Issued.—The by-laws usually provide for the surrender of a certificate and the issue of others in lieu of the same, the new to represent in the aggregate the number of shares represented by the original.

Such new issue, if of two or more in lieu of one, may be required by the exigencies of trade. For instance, the owner of 500 shares, represented by one certificate, may find a purchaser for 250 shares; neither party may desire that delivery and payment be postponed until the vendor can procure two new certificates in lieu of the 500-share certificate. In that case the vendor may so change the form

of his assignment as to limit it to 250 shares. Upon presentation of the certificate so assigned, the secretary will make the proper cancellation and new issue, filling out and authenticating certificates representing 250 shares in the name of an assignee, and another for a like amount in the name of the assignor. The former he will deliver, the latter he will retain, attached in the certificate book, subject to the order of the assignor.

The contrivance suggested above is not free from objections, and should not be adopted except in cases of extreme urgency and perfect reliance upon the fidelity of the vendee. Pending his presentation of the certificate to the secretary, the vendor would not have in his possession any evidence whatever of title to the 250 shares remaining unsold, and if his vendee saw fit to do so, he might be in a position to cause much trouble, and even loss, by postponing presentation to the secretary. So, if possible, in the case above, the owner should have the deal disposed of at the office of the secretary, both certificates being properly issued in lieu of the original; or he might have both the new certificates issued to himself and then consummate the sale in the usual form. If, in the meantime, the other party should have withdrawn his offer, the only loss would be an opportunity to make the sale.

§ 529. Transfer of Shares Held by Married Women.—In line with the tendency to remove the common law restrictions upon the individual business activities of married women, the statutes of some states provide that shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a *feme sole*. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband.¹⁶

§ 530. Transfer on Books as Affecting Attachment of Stock.
—While some of the cases hold that an attachment of shares of stock as the property of the person in whose name they stand, will prevail

¹⁶ California Civil Code, sec. 325.

over a prior *bona fide* transfer for value not made or recorded on the books,¹⁷ it has been generally held that in the absence of controlling statutes, a purchaser of the capital stock of a corporation for a valuable consideration is, in the absence of fraud, protected against a subsequent attachment or execution issued against the vendor, although he has failed to have the transfer entered on the books of the corporation.¹⁸ The reason is that a transfer by an assignment of the certificates leaves nothing in the assignor which can be reached by subsequent attachment or levy of execution, although the stock remains in his name upon the books of the corporation.¹⁹

One who places corporate stock in the name of another on the books of the corporation to qualify him as a director, retaining possession of the certificate himself, has priority over an attaching creditor of the latter who did not extend credit on the faith of the stock.²⁰

§ 531. Corporation Has No Lien on Stock.—At common law and in the absence of statutory authority, a corporation may not provide for or enforce a lien upon its stock, for any personal indebtedness of a stockholder to the corporation.¹ While it may pursue its remedy against the party while the stock is owned by him, or against one to whom it has been transferred fraudulently, the corporation has no lien on the stock itself which it may enforce against an innocent holder thereof. It is true that the corporation can withhold the dividends due but unpaid at the time of the transfer,

¹⁷ *Bleakley v. Candler*, 169 N. C. 16, 84 S. E. 1039, A. C. 1917A 425; *French v. White*, 78 Vt. 89, 62 Atl. 35, 6 A. C. 479, 2 L. R. A. (N. S.) 804.

¹⁸ *Husband v. Linehan*, 168 Ky. 304, 181 S. W. 1089, A. C. 1917D 954; *Mapleton Bank v. Standrod*, 8 Idaho 740, 71 Pac. 119, 67 L. R. A. 656; *McClung v. Colwell*, 107 Tenn. 592, 64 S. W. 890, 89 A. S. R. 961.

¹⁹ *Everitt v. Farmers & Merchants Bank*, 82 Neb. 191, 117 N. W. 401, 20 L. R. A. (N. S.) 996.

²⁰ *Gray v. Graham*, 87 Conn. 601, 89 Atl. 262, 49 L. R. A. (N. S.) 1159.

¹ *Gemmell v. Davis*, 75 Md. 546, 32 A. S. R. 412; *Farmers & Merchants Bank v. Wasson*, 48 Iowa 336, 30 A. R. 398; *Massachusetts Iron Co. v. Hooper*, 7 Cush. (Mass.) 183; *Bank of Holly Springs v. Pinson*, 58 Miss. 421, 38 A. R. 330; *Heart v. State Bank*, 2 Dev. Eq. (17 N. C.) 111; *Dana v. Brown*, 1 J. J. Marsh. (24 Ky.) 304; *Merchants Bank v. Shouse*, 102 Pa. St. 488; *Williams v. Lowe*, 4 Neb. 382; *Turner v. Cattlemen's Trust Co. (Tex.)*, 215 S. W. 831.

but the right to withhold them does not rest upon the theory of a lien, but upon the right to offset the dividends against an existing indebtedness,² for the transferee is not entitled under any circumstances to dividends declared prior to the transfer. A by-law, therefore, which seeks to establish such a lien may not be invoked against one who takes stock without actual knowledge of its existence.³

Stockholders who are indebted to the corporation, however, and those becoming such with actual knowledge of the by-law, are bound by it.⁴ Such notice of the existence of a by-law giving a lien may be presumed from the fact that it, or a definite reference to it, was printed upon the certificate,⁵ although the words "subject to the by-laws and articles of incorporation" are not sufficient.⁶ Again, where each of two corporations has a by-law giving the corporation a lien on its stock for individual debts, such fact is not notice thereof to one of the corporations purchasing stock in the other, the mere knowledge of the existence of its own by-law not intimating to it the fact that the other corporation has a similar one.⁷

In the state of New York such a lien is given by statute, provided, however, that the statutory section on the subject be printed upon the certificate. This lien applies to debts of every nature. In most states, a statutory lien, irrespective of any notice on the certificate, is given for unpaid calls and assessments.

§ 532. Relative Rights of Parties to Transfer With Respect to Voting Privileges and Dividends.—It was stated that intermediate transfers of the certificate before having entries made in the stock certificate book need not be regarded, and that delay in having a transfer made, while the stock is being actively dealt in is of no consequence. While that is true, as respects the validity of

² *Gemmell v. Davis*, 75 Md. 546, 23 Atl. 1032, 32 A. S. R. 412.

³ *People v. Crockett*, 9 Cal. 112, 115; *Driscoll v. West Bradley & Cary Mfg. Co.*, 59 N. Y. 96, 102; *Massachusetts Iron Co. v. Hooper*, 61 Mass. (7 Cush.) 183.

⁴ *Morrison-Wentworth Bank v. Kerdolff*, 75 Mo. App. 297; *Atchison Co. v. Durfee*, 118 Mo. 431, 24 S. W. 133, 40 A. S. R. 396.

⁵ *St. Louis Perpetual Ins. Co. v. Goodfellow*, 9 Mo. 149; *State Sav. Ass'n v. Nixon-Jones Printing Co.*, 25 Mo. App. 642.

⁶ *Des Moines Nat. Bank v. Warren County Bank*, 97 Iowa 204, 66 N. W. 154.

⁷ *Anglo-Californian Bank v. Grangers Bank*, 63 Cal. 359.

transfers and as affecting the right to finally have the transfer made, yet the question of the right to vote and to draw dividends connects itself with the main question. The law entitles the person whose name stands upon the books of the corporation to vote and draw dividends; and if the right to vote the stock be considered of any value, or if it be dividend-paying stock, it will behoove each assignee to have the transfer duly entered and a new certificate issued to him immediately upon becoming entitled to have that done.

In case of a mere transfer and assignment, the assignor would still have the right to vote at a meeting held prior to a transfer on the books of the company. If, however, the assignment were given too late to have the transfer made on the books for any particular meeting, he could give the assignee a proxy, and in the same instrument revoke any outstanding proxy.

As between vendor and vendee of shares of stock, it is the settled rule that the vendee is entitled to all the dividends on the stock which are declared after the sale of the stock. In other words, dividends belong to the person entitled to the stock when the dividends are declared.⁸ This is so as between the immediate parties to the transfer, though the transfer has not been recorded on the books of the corporation.

A pledgee is protected in the same way, as is a purchaser of the stock; and consequently, dividends declared during the continuance of the pledge belong to him, though he is not registered as owner on the corporate books.⁹ If not so registered, however, and the corporation pays the dividend in good faith and without notice of the transfer, to the nominal owner, as appears by its record, the payment would be undoubtedly a good one.

§ 533. Transfer With a Reservation of Dividends.—It is sometimes desirable to sell or donate stock, but to reserve to the vendor or donor the dividends for a fixed period, or during life. Such transactions are valid and enforceable.¹⁰ The following is a proper form for such transfer, to be endorsed upon the stock certificate:

⁸ *Abercrombie v. Riddle*, 3 Md. Ch. 320; *Gemmell v. Davis*, 75 Md. 546, 23 Atl. 1032, 32 A. S. R. 412.

⁹ *Hill v. Newichawanick*, 8 Hun 459, 71 N. Y. 593.

¹⁰ *Calkins v. Equitable Building & Loan Ass'n*, 126 Cal. 531, 59 Pac. 30.

TRANSFER WITH RESERVATION OF DIVIDENDS.

For value received, I hereby sell, assign and transfer to John Roberts the shares of stock within mentioned, reserving to myself the dividends declared upon the same during my life, and authorize the secretary of said corporation to enter such transfer on the books of said corporation.

WILLIAM ROBERTS.

Dated January 2, 1926.

§ 534. Transfer of Stock Owned by Deceased Persons.—

Obviously, stock interests in corporations being personal property, vest in executors and administrators of estates upon the death of the original owners.¹¹ The latter have a right to demand a new certificate in lieu of and upon surrender of the old, upon supplying the corporation with reasonably sufficient evidence of their authority.¹² Purchasers from them in the course of administration have the same right to recognition from the corporation.¹³

§ 535. Pledge of Stock.—Where the possession of stock certificates has been given to another as a pledge, the transaction is valid, as in the case of an ordinary transfer, as between the parties themselves, even though no transfer has been effected upon the books of the corporation.¹⁴ In order, however, to protect himself against subsequent transferees, and creditors in good faith, and to entitle him to recognition by the corporation, the pledgee must have the transfer entered on the books.¹⁵ Sound authority holds that the pledgee is not entitled to a transfer of such stock in his name before the maturity of the debt.¹⁶ The better practice both for the protection of the interest of the pledgee and also that he may avoid the responsibility of a shareholder is to have the stock transferred to him expressly as "pledgee."¹⁷

¹¹ *London, Paris & Amer. Bank v. Aronstein*, 117 Fed. 601, 54 C. C. A. 663.

¹² *Bird v. Chicago, etc., R. Co.*, 137 Mass. 428.

¹³ *Brown v. San Francisco Gas L. Co.*, 58 Cal. 426.

¹⁴ *McFall v. Buckeye Grangers Warehouse Ass'n*, 122 Cal. 468, 55 Pac. 253, 68 A. S. R. 47.

¹⁵ *West Coast Safety Faucet Co. v. Wulff*, 133 Cal. 315, 85 A. S. R. 171, 65 Pac. 622.

¹⁶ *Spreckels v. Nevada Bank of San Francisco*, 113 Cal. 272, 45 Pac. 329, 54 A. S. R. 348, 33 L. R. A. 459. See, also, *Manning v. App Consol. Gold Min. Co.*, 171 Cal. 610, 154 Pac. 301.

¹⁷ *Henkle v. Salem Mfg. Co.*, 39 Ohio St. 547, *Welles v. Larrabee*, 36 Fed. 866, 2 L. R. A. 471; *Pauly v. State Loan & Trust Co.*, 165 U. S. 606, 17 S. C. R. 465, 41 L. Ed. 844.

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When the endorsement and power of attorney are general and do not distinguish the transaction as a pledge, the pledgee has a right to have an unqualified transfer entered and a new certificate issued to him,¹⁸ and doing so does not constitute a conversion.¹⁹ But where the transfer is clearly denominated a pledge the pledgee is entitled merely to have the nature of the transaction, together with the names of the parties, the date, and a description of the stock noted on the books; a new certificate may not be demanded.²⁰

§ 536. **Mortgage of Stock.**—Corporation stock is personal property. Whether it may properly be the subject of a chattel mortgage depends upon the statutes of the particular state in which the corporation is chartered. As between the parties to the mortgage, however, it may be enforced in any event; for limitations upon the right to mortgage personal property without a change of possession are designed to protect creditors and *bona fide* purchasers only. Therefore, in a state where chattel mortgages of corporation stock are not authorized, such a mortgage has been made, and subsequently foreclosed by judicial action and judgment, the purchaser at the sheriff's sale is entitled, upon presentation of the sheriff's deed, to have the corporation transfer the stock to him on its books and issue to him a certificate therefor.¹

§ 537. **Stolen and Lost Certificates.**—It is manifest that the finder of, or one who may have stolen a certificate of stock, even though it be endorsed and a power of attorney signed in blank, acquires no title to the stock. Nor does even a *bona fide* purchaser

¹⁸ *Day v. Holmes*, 103 Mass. 306; *Hurley v. Pusey & Jones Co.*, 274 Fed. 487.

¹⁹ *Hubbell v. Drexel*, 11 Fed. 115; *Heath v. Griswold*, 18 Blatchf. 555, 5 Fed. 573; *National Bank of Chicago v. Fairbank State Bank*, 173 Iowa 489, 155 N. W. 963; *Osborn v. Detroit Kraut Co.*, 193 Mich. 664, 160 N. W. 442; *First Nat. Bank v. Multnomah State Bank*, 87 Ore. 423, 170 Pac. 534; *Davis v. Hardwick*, 43 Tex. Civ. App. 71, 94 S. W. 359.

²⁰ *Spreckels v. Nevada Bank*, 113 Cal. 272, 277, 45 Pac. 329, 54 A. S. R. 348, 33 L. R. A. 459; *Moore v. Marshalltown Opera-House Co.*, 81 Iowa 45, 46 N. W. 750; *Brown v. Hotel Assoc.*, 63 Neb. 181, 88 N. W. 175.

¹ *Tregear v. Etiwanda Water Co.*, 76 Cal. 537, 18 Pac. 658, 9 A. S. R. 245.

from the finder,² or the thief.³ In other words, certificates of stock are not negotiable instruments. An actual delivery is necessary to effect a transfer.

The remedy of the injured purchaser is against the person from whom he purchased the certificate. He may recover from a stockholder who, though innocent, acts as agent for one who has stolen stock endorsed in blank, and sells the same and delivers the purchase price to the thief.⁴ If, however, the owner of stock endorses it, signs the power of attorney and places it in the hands of another party who, to all appearances has all the "indicia of ownership," and the latter party misappropriates the stock and disposes of it to an innocent purchaser, the latter is entitled to the benefit of the stock as against the original owner,⁵ on the common principle that where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.⁶

§ 538. Estoppel of Owner to Deny Authority for Transfer.

—Where the owner of stock has by his own acts, even if unintentionally, led a *bona fide* purchaser to take stock which the owner had no desire to transfer to him, the interests of the purchaser as against the owner will be protected. Thus, where shares of stock have been endorsed in blank and placed by the owner in the hands of his known agent or trustee, a sale in excess of the authority of the latter is valid.⁷ A purchaser of stock from one having apparent title is a *bona fide* purchaser.⁸

² Craig v. Hesperia L. & W. Co., 113 Cal. 7, 14, 45 Pac. 10, 54 A. S. R. 316, 35 L. R. A. 306; Robinson v. Goldfield Merger Mines Co., 46 Nev. 291, 206 Pac. 399, 213 Pac. 103.

³ Barstow v. Savage Min. Co., 64 Cal. 388, 1 Pac. 349, 49 A. S. R. 705; Knox v. Eden Musee American Co., 148 N. Y. 441, 42 N. E. 988, 51 A. S. R. 700, 31 L. R. A. 779.

⁴ Swim v. Wilson, 90 Cal. 126, 127-131, 27 Pac. 33, 25 A. S. R. 110, 13 L. R. A. 605; Cerkel v. Waterman, 63 Cal. 34, 35; Bercich v. Marye, 9 Nev. 312, 316, 317, 13 Mor. Min. Rep. 544; Kimball v. Billings, 55 Me. 147, 92 A. D. 581.

⁵ National Safe Dep. & Tr. Co. v. Hibbs, 229 U. S. 391, 33 S. C. R. 818, 57 L. Ed. 1241; Marx & Co. v. Mahan, 17 Ala. App. 671, 88 So. 206.

⁶ California Civil Code, section 3543.

⁷ Marx & Co. v. Mahan, 17 Ala. App. 671, 88 So. 206; Nicholson v. Morgan, 119 Misc. Rep. 309, 196 N. Y. Supp. 147; Spellacy v. Young, 44 Cal. App. 174, 186 Pac. 368; Crosby v. Simpson, 234 Mass. 568, 125 N. E. 616; Bollstrom v. Duplex Power Co., 208 Mich. 15, 175 N. W. 492.

⁸ Halpern v. Cure, 173 N. Y. Supp. 385.

§ 539. Precautions to Be Taken by Corporation Officers.—

The relation of the corporation and its officers to the stockholders, with respect to transfers, is similar to that of a bank to its depositors. The officers are the custodians of its stock books, and it is their duty to see that all transfers of shares are properly made, either by the stockholders or persons having authority from them. If, upon the presentation of the certificate for transfer, they are at all doubtful as to the identity of the party offering it, with its owner, or if not satisfied of the genuineness of a power of attorney produced, they may require that the identity of the party in the one case, or the genuineness of the document in the other, be satisfactorily established before allowing the transfer to be entered. In either case they must act upon their own responsibility. Neither the absence of blame on the part of the officers of the company in allowing an authorized transfer of stock, nor the good faith of the purchaser of stolen property, will avail as an answer to the demand of the true owner.⁹

Where the stock is endorsed in blank a corporation is under no duty to determine the title to stock presented for transfer, as to whether the agent presenting the stock for transfer violated his instructions.¹⁰

§ 540. Transfers by Trustees—Duty of Corporation Officers.—

Even though stock may stand upon the books of the corporation in the name of a party without qualification, it is bound to exercise reasonable care to protect the rights of the real parties in interest. Where, for instance, the corporation has actual notice that the stock is held in trust, it may require satisfactory evidence of the authority of the trustee to order a transfer,¹¹ for the corporation charged with such notice is liable for all damages resulting to the equitable owners as a result of a transfer on the books in excess of the authority of the trustee.¹² Thus, where an administrator seeks

⁹ *Brown v. Howard Fire Ins. Co.*, 42 Md. 384, 20 A. R. 90; *Central R. & Banking Co. v. Ward*, 37 Ga. 515; *Telegraph Co. v. Davenport*, 97 U. S. 369, 24 L. Ed. 1047, citing cases.

¹⁰ *Valleyview Consol. Gold Min. Co. v. Whitehead*, 66 Colo. 237, 180 Pac. 737.

¹¹ *Bayard v. Farmers & Mech. Bank*, 52 Pa. 232; *Peck v. Providence Gas Co.*, 17 R. I. 275, 21 Atl. 543, 23 Atl. 967, 15 L. R. A. 643.

¹² *Loring v. Salisbury Mills*, 125 Mass. 138; *Weyer v. Second National*

to have transferred on the books of a corporation stock standing in the name of a deceased person, the corporation is bound to take notice of the fact that he is acting in a fiduciary capacity and investigate the extent of his authority.¹³

§ 541. Transfers by Non-Resident Stockholders.—In the case of transfers of stock by stockholders residing without the state in which the corporation has its offices, it is difficult for the officers of the corporation to satisfy themselves of the authenticity of a purported transfer. In order to protect the officers in such a case against the possibility of an improper entry of a transfer where the stock certificate was endorsed by the owner of the stock, now deceased, but never actually delivered to another, the statutes of many states require that proof of the propriety of the transfer must be furnished the officials of the corporation. Thus, in some states, when the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his death before the transfer; and if such affidavit or other evidence or bond be not furnished when required.

§ 542. Wrongful Transfers by the Corporation.—If a corporation, pursuant to a forged assignment or on the presentation of a

Bank, 57 Ind. 198; Bohlen's Estate, 75 Pa. 304; Young v. New Standard Concentrator Co., 148 Cal. 306, 83 Pac. 28; Cox v. First National Bank, 119 N. C. 302, 26 S. E. 22; Peck v. Providence Gas Co., 17 R. I. 275, 21 Atl. 543, 23 Atl. 967, 15 L. R. A. 643.

¹³ Caulkins v. Memphis Gas-Light Co., 85 Tenn. 683, 4 S. W. 287, 4 A. S. R. 786; Peck v. Bank of America, 16 R. I. 710, 19 Atl. 369, 7 L. R. A. 826; Marbury v. Ehlen, 72 Md. 212, 19 Atl. 648; Geyser-Marion Gold Min. Co. v. Stark, 106 Fed. 558, 45 C. C. A. 467, 53 L. R. A. 684, 21 Mor. Min. Rep. 220; Baker v. Atlantic Coast Line R. Co., 173 N. C. 365, 92 S. E. 170, L. R. A. 1917E 266.

lost or stolen certificate, cancels the old and issues a new certificate, the ownership of the original stock is not thereby changed,¹⁴ and the true owner may bring suit to compel the issuance of a new certificate to him,¹⁵ or recover damages for a failure to do so.¹⁶ As dividends are declared he may sue therefor.¹⁷

Upon the discovery of the mistake, the corporation may cancel the new certificate and refuse to longer recognize the party to whom it was issued as a stockholder.¹⁸ But a *bona fide* purchaser from the person receiving the new certificate is entitled to all of the rights of a stockholder, as his title may be traced directly to the act of the corporation.¹⁹ In the same position is one to whom the new certificate was issued solely at the instance of the person from whom he purchased the stock represented by the old certificate, for he has parted with value relying upon the act of the corporation.²⁰ The sole remedy of the corporation in such cases is a recovery, from the person procuring the issuance of the new certificate, of all damages suffered, including dividends paid and the cost of litigation resulting.¹ If, however, the recognition of both the original owner and the

¹⁴ *Crocker v. Old Colony R. Co.*, 137 Mass. 417; *Reynolds v. Touzalin Imp. Co.*, 62 Neb. 236, 87 N. W. 24; *Baker v. Atlantic Coast Line R. Co.*, 173 N. C. 365, 92 S. E. 170, L. R. A. 1917E 266.

¹⁵ *Withers v. Lafayette County Bank*, 67 Mo. App. 115; *Sewell v. Boston Water Power Co.*, 4 Allen (Mass.) 277, 81 A. D. 701; *Pennsylvania Co. v. Franklin Fire Ins. Co.*, 181 Pa. 40, 37 Atl. 191, 37 L. R. A. 780; *Herbert Kraft Co. Bank v. Bank of Orland*, 133 Cal. 64, 65 Pac. 143; *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 338, 11 N. W. 187.

¹⁶ *Ashby v. Blackwell*, Ambl. (Eng.) 503.

¹⁷ *Pollock v. National Bank*, 7 N. Y. 274, 57 A. D. 520; *Pratt v. Taunton Copper Co.*, 123 Mass. 110, 25 A. R. 37; *Western Union Tel. Co. v. Davenport*, 97 U. S. 369, 24 L. Ed. 1047.

¹⁸ *Simm v. Anglo-Am. Tel. Co.*, 5 Q. B. D. (Eng.) 188; *Brown v. Howard Fire Ins. Co.*, 42 Md. 384, 20 A. R. 90; *Hambleton v. Central Ohio R. Co.*, 44 Md. 551.

¹⁹ *In re Bahia, etc., R. Co.*, L. R. 3 Q. B. 584; *Moore v. Citizens Nat. Bank*, 111 U. S. 156, 4 S. C. R. 345, 28 L. Ed. 385; *Boston & A. R. Co. v. Richardson*, 135 Mass. 473; *Crocker v. Old Colony R. Co.*, 137 Mass. 417; *Machinists Nat. Bank v. Field*, 126 Mass. 345; *Philadelphia Nat. Bank v. Smith*, 195 Pa. 38, 45 Atl. 655.

²⁰ *Trimble v. Wollman*, 71 Mo. App. 467.

¹ *Boston & A. R. Co. v. Richardson*, 135 Mass. 473.

bona fide purchaser as stockholders would result in an overissue of stock, the issue to the latter is void, and his remedy is an action for the recovery of the value of the stock from the corporation.²

² New York, etc., R. Co. v. Schuyler, 34 N. Y. 30; Moores v. Citizens Nat. Bank, 111 U. S. 156, 4 S. C. R. 345, 28 L. Ed. 385.

CHAPTER XXXIII.

STOCKHOLDERS' LIABILITY.

- § 543. Who Is Liable as a Stockholder.
- § 544. Liability of One Whose Name Appears on Books as Stockholder Without His Consent.
- § 545. Law Governing Stockholders' Liability.
- § 546. Extent of a Stockholder's Liability.
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- § 554. Liability of Guardians, Trustees, Executors, Agents, Etc.
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- § 556. Enforcement of Liability of Stockholders of Foreign Corporations.
- § 557. Liability of Members of Non-Profit Corporations.
- § 558. Statutory Liability of Stockholder for Tort of Corporation.
- § 559. When Statute of Limitations Commences to Run.

§ 543. Who Is Liable as a Stockholder.—A mere subscription to stock is sufficient to constitute the subscriber a stockholder.¹ But the rule is laid down in some cases that the mere fact of subscription does not make such subscriber a stockholder.² All actual stockholders, whether the certificate has been issued or not, are liable as such, the certificate being, as before stated, merely evidence of ownership but not the stock itself.³

¹ In *re Grand Rapids Furniture Agency*, 209 Fed. 483; *Snodgrass v. Zander*, 106 Ark. 462, 154 S. W. 212; *Mountain Water Works Constr. Co. v. Holme*, 49 Colo. 412, 113 Pac. 501; In *re Culver*, 145 Iowa 1, 123 N. W. 743, 25 L. R. A. (N. S.) 384; *Drury v. McCracken & Co.*, 14 Ky. L. Rep. 208; *Holland v. Duluth Iron Min., etc.*, 65 Minn. 324, 68 N. W. 50, 60 A. S. R. 480; *Ege v. Centerville Tel. Exch. Co.*, 33 S. D. 648, 147 N. W. 70; *Utah Hotel Co. v. Madsen*, 43 Utah 285, 134 Pac. 577.

² *Grier v. Union Nat. L. Ins. Co.*, 217 Fed. 287; *Webb v. Moeller*, 87 Conn. 138, 87 Atl. 277; *Nebraska Chicory Co. v. Lednický*, 79 Neb. 587, 113 N. W. 245; *Keystone Wrapping Mach. Co. v. Bromeier*, 42 Pa. Super. Ct. 384; *Yeaman v. Galveston City Co.*, 106 Tex. 389, 167 S. W. 710, A. C. 1917E 191.

³ *Mitchell v. Beckman*, 64 Cal. 117, 121, 28 Pac. 110.

It seems to be well settled that one to whom stock is issued by the corporation, and who has the same placed in his name on the corporation books as the owner, is liable to the creditors of the corporation as though he were the absolute owner; and this whether he was in fact a pledgee, agent, or trustee for the real owner.⁴ So long, therefore, as the record fails to disclose any qualification of the record holder's absolute ownership of the stock, he is liable.⁵ It is of no moment that he holds the stock merely to qualify as a director,⁶ or that he is in fact a mere pledgee.⁷

The reason for this is obvious. The stock stands on the books of the corporation in his name, and he is thus held out to the public as a shareholder, and persons dealing with the corporation have no means of knowing the nature of the contract under which he holds the stock, and have a right to presume, and are led to believe, that he is the absolute owner of it; and it is but fair to presume that they deal with the corporation upon the faith and credit of parties thus appearing as stockholders.⁸

The proper course for the pledgee, if he would avoid liability, is to take care to have the records of the corporation show the true nature of the transaction by which the stock has been placed in his hands.⁹ If the officers of a corporation, without authority of a pledgee, enter the stock on the books in his name as absolute owner, he may, by a prompt protest upon his discovery of the error, relieve himself of liability, even though the debt sued on was contracted while the record showed him to be an absolute owner.¹⁰ Some statutes provide, however, that even if the records of the corporation show the pledgee to be the absolute owner, the actual owner may be held liable at the option of the creditor. Such a provision is designed

⁴ *Baines v. Babcock*, 95 Cal. 581, 593, 27 Pac. 674, 30 Pac. 776, 29 A. S. R. 158; citing *National Bank v. Case*, 99 U. S. 628, 631, 25 L. Ed. 448; *Thompson v. Reno Savings Bank*, 19 Nev. 103, 7 Pac. 68, 3 A. S. R. 797.

⁵ *Abbott v. Jack*, 136 Cal. 510, 513, 69 Pac. 257.

⁶ *Moore v. Boyd*, 74 Cal. 167, 174, 15 Pac. 670.

⁷ *Hurlburt v. Arthur*, 140 Cal. 103, 107, 73 Pac. 734, 98 A. S. R. 17.

⁸ *Hurlburt v. Arthur*, 140 Cal. 103, 108, 73 Pac. 734, 98 A. S. R. 17, quoting *Magruder v. Colston*, 44 Md. 349, 22 A. R. 47.

⁹ *Hurlburt v. Arthur*, 140 Cal. 103, 107, 73 Pac. 734, 98 A. S. R. 17; *Spreckels v. Nevada Bank*, 113 Cal. 272, 277, 45 Pac. 329, 54 A. S. R. 348, 33 L. R. A. 459.

¹⁰ *Welch v. Gillelen*, 147 Cal. 571, 82 Pac. 248; *Shattuck & Desmond Warehouse Co. v. Gillelen*, 154 Cal. 778, 99 Pac. 348.

to prevent fraudulent transfers to irresponsible dummies for the direct purpose of avoiding the statutory liability of a stockholder.¹¹

The estate of a deceased stockholder is liable for debts contracted by a corporation during the probate of the estate and before a distribution.¹²

§ 544. Liability of One Whose Name Appears on Books as Stockholder Without His Consent.—In a number of cases it is held that one whose name is put upon the books of a corporation as a stockholder without his consent is not thereby subjected to the liability of a stockholder.¹³ Even if stock is issued to one with his knowledge, but without his consent, it has been held that this fact alone does not render him liable as a stockholder.¹⁴ The entry of the name of one upon the corporate books does not preclude him from showing that he was in fact not a stockholder, and that the issuance of stock in his name was unauthorized,¹⁵ since a person cannot be compelled to be a member of a corporation without his knowledge or consent.¹⁶

§ 545. Law Governing Stockholders' Liability.—The liability of stockholders of a corporation to the creditors thereof must be determined according to the law of the state wherein the corporation exists and by whose laws it was organized.¹⁷ And the decisions of the highest court of that state construing the statutory or constitutional provision by which the liability is imposed will be followed by the

¹¹ See *Duke v. Huntington*, 130 Cal. 272, 62 Pac. 510; *Abbott v. Jack*, 136 Cal. 510, 69 Pac. 257; *Baines v. Babcock*, 95 Cal. 593, 27 Pac. 674, 30 Pac. 776, 29 A. S. R. 158; *O'Connor v. Witherby*, 111 Cal. 523, 44 Pac. 227; *National Bank v. Case*, 99 U. S. 628, 631, 25 L. Ed. 448; *Thompson v. Reno Sav. Bank*, 19 Nev. 103, 7 Pac. 68, 3 A. S. R. 797.

¹² *Miller & Lux v. Katz*, 10 Cal. App. 576, 102 Pac. 946.

¹³ *Girard Life Ins. Annuity & T. Co. v. Loving*, 71 Kan. 558, 81 Pac. 200; *Glenn v. Garth*, 133 N. Y. 18, 30 N. E. 649, 31 N. E. 344; *Shean v. Cook*, 180 Cal. 92, 179 Pac. 185, 3 A. L. R. 1042.

¹⁴ *Grier v. Union Nat. Life Ins. Co.*, 217 Fed. 287.

¹⁵ *Welch v. Gillelen*, 147 Cal. 571, 82 Pac. 248.

¹⁶ *Kisner's Estate*, 254 Pa. 597, 99 Atl. 168.

¹⁷ *Zehr v. Zehr*, 203 Ill. App. 584, 595; *Bell v. Farwell*, 176 Ill. 489, 52 N. E. 346, 68 A. S. R. 194, 42 L. R. A. 804; See, also, chapter "Foreign Corporations."

courts of other states in which it is sought to enforce the liability against non-resident stockholders.¹⁸

§ 546. Extent of a Stockholder's Liability.—The common expression, "stockholder's liability," is used to denote the extent to which third persons may go beyond the corporation itself and personally sue the individual stockholder or member for any portion of an unpaid corporate indebtedness.

For the liquidation of a corporate indebtedness, a creditor may resort to the assets of the corporation as in the case of any other debtor. Most states have laws designed to preserve for creditors the integrity of such assets. Debtors of the corporation may be called upon to pay, whether they be third parties or stockholders themselves. In the latter class are those whose stock has not been fully paid, and those who may not have paid all assessments levied. To the individual directors also may the creditors in certain contingencies look for the payment of their claims.

Independently of an additional liability for the benefit of creditors imposed on stockholders by special charter, general acts of incorporation, or other statutes, a stockholder's liability is governed by his contract of subscription, and does not extend beyond the amount due thereon.¹⁹

The extent of the liability imposed on stockholders for corporate debts varies greatly with the different constitutional provisions, special charters, general acts of incorporation, and other statutes.²⁰ The law of the domicile of the corporation determines the extent of the liability, while the law of the forum determines the method of enforcing that liability.¹

¹⁸ *Evans v. Nellis*, 187 U. S. 271, 23 S. C. R. 74, 47 L. Ed. 173; *Provident Gold Min. Co. v. Haynes*, 173 Cal. 44, 159 Pac. 155; *Johnson v. Morgan*, 178 Iowa 577, 160 N. W. 2; *Rogers v. Stag Min. Co.*, 185 Mo. App. 659, 171 S. W. 676; *Miller v. Smith*, 26 R. I. 146, 58 Atl. 634, 106 A. S. R. 699, 66 L. R. A. 473.

¹⁹ *Jackson v. Meek*, 87 Tenn. 69, 9 S. W. 225, 10 A. S. R. 620; *Hunt v. Sharkey*, 20 Cal. App. 690, 130 Pac. 21; *Swearingen v. Sewickley Dairy Co.*, 198 Pa. 68, 47 Atl. 941, 53 L. R. A. 471.

²⁰ *Marshall Foundry Co. v. Killian*, 99 N. C. 501, 6 S. E. 680, 6 A. S. R. 539.

¹ *New Haven Horseshoe Nail Co. v. Linden Springs Co.*, 142 Mass. 349, 7 N. E. 773, 2 N. E. R. 580.

§ 547. **Nature and Extent of the Liability of Each Stockholder.**—Under the California statute, each stockholder is liable for only his just proportion, measured by the ratio of his stock to the total stock issued, of each debt of the corporation. No one creditor may exact the whole amount of his claim from any one stockholder, leaving the latter to call upon his fellow stockholders for contributions to him of their shares. In other words, his liability is joint, not several.² In order to determine, therefore, the amount which he may claim from any one individual stockholder, the creditor must ascertain three facts: The whole number of shares subscribed, the number held by the individual at the time of the indebtedness and the amount of the debt.³ A stockholder in a corporation is not liable for its acts beyond his statutory liability, from the mere fact of his being the majority stockholder.⁴

§ 548. **Statutory Liability.**—At common law and in the absence of statutory provision, a stockholder's contribution to the creditors of the corporation is limited to the loss of his interest in the business as represented by his full-paid shares of stock therein.⁵ In several states a special statutory liability is imposed upon the individual stockholder to meet a just proportion of the unpaid obligations of the corporation remaining after the assets of the corporation have been exhausted. The details of such legislation and the extent of the liability imposed vary greatly in the different states. In most, however, the principle of proportion prevails, each stockholder being individually liable only for such proportion of the indebtedness as the par value of his stock bears to the par value of the total outstanding capital stock of the corporation.⁶

For instance, if the capital stock which has been subscribed be

² *Gardiner v. Bank of Napa*, 160 Cal. 577, 117 Pac. 667.

³ *Thomas v. Wentworth Hotel Co.*, 158 Cal. 275, 110 Pac. 942, 139 A. S. R. 120; *San Francisco Commercial Agency v. Miller*, 4 Cal. App. 291, 87 Pac. 630.

⁴ *Liebhardt v. Wilson*, 38 Colo. 1, 88 Pac. 173, 120 A. S. R. 97.

⁵ *Gray v. Coffin*, 9 Cush. (Mass.) 192; *Freeland v. McCullough*, 1 Den. (N. Y.) 414, 43 A. D. 685.

⁶ *Johnson v. Libby*, 111 Me. 204, 88 Atl. 647, A. C. 1916C 681; *Sacramento Bank v. Pacific Bank*, 124 Cal. 147, 56 Pac. 787, 71 A. S. R. 36, 45 L. R. A. 863; *Badger Paper Co. v. Rose*, 95 Wis. 145, 70 N. W. 302, 37 L. R. A. 162. See California Civil Code, section 322.

\$100,000, divided into 1000 shares of \$100 each, and A holds 100 shares, and the total indebtedness of the corporation for which the stockholders are liable be \$10,000, A's maximum individual liability (in addition to paying to the corporation any sum which may remain unpaid on his shares), will be, in the aggregate, 100/1000 of \$10,000, that is, \$1000.

Under the constitution and statutes of some states, each stockholder may be compelled to pay to the corporation assessments to the full amount of his subscription, to be applied to corporate debts, and also be individually liable to each creditor for such proportion of his claim as the amount of stock held by such stockholder bears to the whole of the capital stock. These two liabilities and the remedies based thereon are concurrent.⁷

§ 549. Unlimited Liability of Stockholders.—In some states there are provisions, the effect of which is to double the liability of the stockholder by making him liable, not only on his subscription for the par value of the stock subscribed by him but also for a further sum equal to the full subscription price of his stock. In other jurisdictions, each stockholder of a corporation is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation:

In such states, any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was

⁷ *Sacramento Bank v. Pacific Bank*, 124 Cal. 147, 56 Pac. 787, 71 A. S. R. 36, 45 L. R. A. 863.

incurred; and such liability is not released by any subsequent transfer of stock.

The term stockholder applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, are not liable by reason of any such investment; nor must the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability.

In a corporation having no capital stock, each member is individually and personally liable for an equal share of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as may be brought against one or more stockholders, and similar judgments may be rendered.

The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within the state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of the state.

§ 550. Voluntary Payment of Share of Indebtedness.—One is privileged to pay his share of the indebtedness of the corporation without suit. It is well, however, that he should in most cases have the justice of a claim adjudicated in a suit against the corporation. If he voluntarily pays the whole claim or a part thereof, but more than his just share, he has no right of action against the corporation

for the excess.⁸ But where a stockholder of a corporation pays a debt of the corporation in a legitimate and fair effort to protect his own interest in the corporate property which is liable for the debt, the payment is not voluntary in the legal sense that it will preclude his right to contribution from another stockholder.⁹

§ 551. Enforcement of Liability.—In some jurisdictions the liability of the stockholder is for the principal debt, and is not conditional upon the insolvency of the corporation. Action, therefore, may be brought directly against the individual without waiting to exhaust one's remedy against the corporation. The liability of the stockholder is as distinct and separate from that of the corporation, as it would be if the law had made no provision for any other liability than that of the stockholders for the debts of the company.¹⁰ This is true even if the creditor has a right of action on a mortgage given by the corporation. He need not first exhaust his security.¹¹

As many stockholders as the creditor sees fit may be sued in one action;¹² the stockholders may be sued alone without the corporation being joined as defendant,¹³ or the corporation and the stockholders may be joined as parties defendant.¹⁴ In the latter proceeding the rights of all parties may readily be ascertained.

The original obligation being contractual in its nature, the credi-

⁸ *Upton v. Women's Club of Kern*, 19 Cal. App. 127, 124 Pac. 858.

⁹ *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40.

¹⁰ *McDonnell v. Alabama Gold L. Ins. Co.*, 85 Ala. 401, 5 So. 120; *Morrow v. Superior Court*, 64 Cal. 383, 386, 1 Pac. 354; *Eva v. Andersen*, 166 Cal. 420, 423, 137 Pac. 16; *Schalucky v. Field*, 124 Ill. 617, 16 N. E. 904, 7 A. S. R. 399.

¹¹ *Dolbear v. Foreign Mines Dev. Co., Ltd.*, 196 Fed. 646, 116 C. C. A. 338; *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047; *Niles State Bank v. Jennings*, 22 Cal. App. 66, 133 Pac. 329.

¹² *McTamany v. Day*, 23 Idaho 95, 128 Pac. 563; *Union Nat. Bank v. Halley*, 19 S. D. 474, 104 N. W. 213; *Greenleaf v. Jacks*, 133 Cal. 506, 507, 65 Pac. 1039.

¹³ *Flour City Nat. Bank v. Wechselberg*, 45 Fed. 547; *Connors v. Carp River Iron Co.*, 54 Mich. 168, 19 N. W. 938; *Greenleaf v. Jacks*, 133 Cal. 506, 508, 65 Pac. 1039.

¹⁴ *Nolan v. Hazen*, 44 Minn. 478, 47 N. W. 155; *Kennedy v. California Sav. Bank*, 97 Cal. 93, 98, 31 Pac. 846, 33 A. S. R. 163.

tors may enforce their claims against the stockholders through a writ of attachment, in some jurisdictions.¹⁵

§ 552. Waiver by Creditors of the Right to Enforce the Personal Liability of Stockholders.—A stipulation in a contract between the corporation and another person to the effect that the latter will not seek to hold the individual stockholders personally liable for any amount remaining unpaid to such person under the terms of the contract is binding and inures to the benefit of the stockholders in a subsequent action by such a person suing as a creditor to enforce the statutory liability ordinarily existing against the stockholders.¹⁶ The individual liability of stockholders for debts of the corporation may be waived by creditors either by express agreement or by their acts.¹⁷

§ 553. Time of the Indebtedness as Affecting the Liability.—One is liable for debts contracted during the time he was a stockholder. Merely disposing, therefore, of one's stock will not relieve him from liability for such debts. In fact, until the books of the corporation show such transfer his liability continues and would obviously accrue for debts contracted in the interval between the actual transfer of the certificate and the entry on the books. Too great diligence and dispatch, therefore, cannot be exercised by the transferrer in having the proper entry promptly made.

A legatee of stock who takes it without objection upon the final

¹⁵ Kennedy v. California Savings Bank, 97 Cal. 93, 95, 31 Pac. 846, 33 A. S. R. 163; Aronson & Co. v. Pearson, 199 Cal. 295, 249 Pac. 188, wherein it was held that a creditor of a corporation, upon a debt incurred by such corporation, which debt is secured by a mortgage or lien upon property of the corporation, is entitled to the issuance of an attachment against the property of a stockholder of such corporation in an action instituted by such creditor upon a stockholder's liability based upon such debt of such corporation so secured, without showing by affidavit that such security has become valueless. However, see Muri v. Young, 75 Mont. 213, 245 Pac. 556, 958.

¹⁶ Babbitt v. Read, 236 Fed. 42, 149 C. C. A. 252; Bush v. Robinson, 95 Ky. 192, 26 S. W. 178; Kohn v. Sacramento Electric Gas & R. Co., 168 Cal. 1, 141 Pac. 626.

¹⁷ Wells v. Black, 117 Cal. 157, 48 Pac. 1090, 59 A. S. R. 162, 37 L. R. A. 619; Bush v. Robinson, 95 Ky. 492, 26 S. W. 178; Brown v. Eastern Slate Co., 134 Mass. 590.

distribution of an estate is liable for debts contracted after the death of the testator, for his ownership dates back to that time.¹⁸

The liability attaches at the time when the debts were contracted, not at the time when they were payable. If, therefore, a note of the corporation was executed prior to a transfer of stock but fell due thereafter, the assignor of the stock is liable.¹⁹

No liability on the part of a corporation to the guarantor of a note given by it, arises until he pays the note; hence only those persons who are stockholders at the time of payment are liable to him for reimbursement.²⁰

§ 554. Liability of Guardians, Trustees, Executors, Agents, Etc.—The provisions in the laws of some states that the guardian or the trustee and not the ward or the party for whose benefit funds were invested in the stock by the guardian or the trustee, shall be responsible to the creditors of the corporation, is designed to inspire those to whom funds have thus been entrusted with caution in administering the duties of their offices.

It is generally held, in the absence of a provision to the contrary, that a person who appears on the books of a corporation as a stockholder is liable to creditors under a charter, statutory or constitutional provision imposing individual liability upon stockholders, although he may in fact hold the stock merely as trustee or agent, and may have no beneficial interest therein.¹

§ 555. Liability of Stockholders of Foreign Corporations.—Stockholders of foreign corporations doing business in another state are in some cases made liable to creditors for debts contracted in the latter state by the corporation. Stockholders of an Arizona corporation, therefore, doing business in the state of California cannot claim exemption from individual liability because such is

¹⁸ *Western Pac. Ry. Co. v. Godfrey*, 166 Cal. 346, 136 Pac. 284, A. C. 1915B 825.

¹⁹ *Wheatley v. Glover*, 125 Ga. 710, 54 S. E. 626, 629; *Allen v. Edwards*, 93 Miss. 719, 47 So. 382; *Eva v. Anderson*, 166 Cal. 420, 424, 137 Pac. 16.

²⁰ *Wills v. Woolner*, 21 Cal. App. 528, 132 Pac. 283.

¹ *Baines v. Babcock*, 95 Cal. 581, 26 Pac. 674, 30 Pac. 776, 29 A. S. R. 158; *Robinson v. Rispin*, 33 Cal. App. 536, 165 Pac. 979; *Sherwood v. Illinois Trust and Sav. Bank*, 195 Ill. 112, 62 N. E. 835, 88 A. S. R. 183; *Converse v. Paret*, 228 Pa. 156, 77 Atl. 429, 30 L. R. A. (N. S.) 1092.

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the law of Arizona.² So, also, a stockholder in a foreign corporation may be sued for his liability for the corporate debts, in the state of his residence. The extent of his liability depends upon the law of the state where the corporation is incorporated; but the procedure and the statute of limitations of the state in which suit is brought must be followed.³

§ 556. Enforcement of Liability of Stockholders of Foreign Corporations.—The personal liability of a non-resident stockholder of a foreign corporation, under a local statute which makes him individually and personally liable for such proportion of the corporate debts contracted while he is such stockholder as the amount of his stock bears to the whole subscribed, and supposes the action against him to be brought "upon such debt," may be enforced outside of the courts of the local state.⁴ Where the statute creating a particular liability provides for the form of remedy by which it shall be enforced, and the legislature plainly intends that such remedy should enter into, and constitute a part of, the creditor's rights, he is confined to the procedure thus prescribed and cannot enforce a stockholder's liability in any foreign tribunal.⁵

While numerous attempts have been made to interpose as a bar to actions in foreign courts to enforce the statutory liability of stockholders the well recognized principle that penal laws of one state can have no operation in another,⁶ yet in most of them the liability has been held to be in the nature of a contractual rather than of a penal liability.⁷

Statutes making stockholders liable to pay the debts of the company in case of a failure to give a certain notice therein specified,

² *Thomas v. Wentworth Hotel Co.*, 158 Cal. 275, 110 Pac. 942, 139 A. S. R. 120; *Pinney v. Nelson*, 183 U. S. 144, 22 S. C. R. 52, 46 L. Ed. 125. See, also, chapter "Foreign Corporations."

³ *Miller v. Lane*, 160 Cal. 90, 116 Pac. 58.

⁴ *Thomas v. Matthiessen*, 232 U. S. 221, 34 S. C. R. 312, 58 L. Ed. 577.

⁵ *Russell v. Pacific Ry. Co.*, 113 Cal. 258, 45 Pac. 323, 34 L. R. A. 747; *Fowler v. Lamson*, 146 Ill. 472, 34 N. E. 932, 37 A. S. R. 163.

⁶ *Attrill v. Huntington*, 70 Md. 191, 16 Atl. 651, 14 A. S. R. 344, 2 L. R. A. 779 (reversed on ground of non-penal nature of statute), 146 U. S. 657, 13 S. C. R. 224, 36 L. Ed. 1123.

⁷ *Converse v. Hamilton*, 224 U. S. 243, 32 S. C. R. 415, 56 L. Ed. 749, A. C. 1913D 1292.

or for certain contracts forbidden by statute, are penal in their nature and not enforceable outside the state enacting them.⁸

§ 557. Liability of Members of Non-Profit Corporations.—In corporations having no capital stock, each member is usually looked upon as having one share of stock; the liability, therefore, of each member is equal.

§ 558. Statutory Liability of Stockholder for Tort of Corporation.—It has been held that a statute making a stockholder liable for debts of the corporation imposes a liability on a judgment against the corporation for a tort.⁹ The contrary rule, however, has been laid down in other cases.¹⁰ By the weight of authority, a statute imposing a liability on stockholders for "debts contracted" by the corporation does not include a judgment for a tort.¹¹ Nor is liability on a judgment against a corporation for a tort imposed by a statute making stockholders liable for "existing debts."¹² However, a stockholder is liable on a judgment against a corporation for tort, under a statute imposing liability for corporate "debts and liabilities."¹³ And also, a statutory liability for the "acts" of a corporation renders a stockholder liable on a judgment against the corporation for a tort.¹⁴

§ 559. When Statute of Limitations Commences to Run.—Where the statute fixing the liability of stockholders of insolvent corporations to the creditors thereof, dependent upon the amount of stock held by the respective stockholders, contemplates a proceeding to determine the necessity of looking to the stockholders and

⁸ *Flash v. Conn*, 109 U. S. 371, 3 S. C. R. 371, 27 L. Ed. 966; *First Nat. Bank of Plymouth v. Price*, 33 Md. 487, 3 A. R. 204, 13 M. M. R. 40; *Coffing v. Dodge*, 167 Mass. 231, 45 N. E. 928; *Sullivan v. Farnsworth*, 132 Tenn. 691, 179 S. W. 317.

⁹ *Cohen v. Toy Gun Mfg. Co.*, 172 Ill. App. 330.

¹⁰ *Clinton Mining & Mineral Co. v. Beacom*, 266 Fed. 621; *Avery & Son v. McClure*, 94 Miss. 172, 47 So. 901, 19 A. C. 134, 22 L. R. A. (N. S.) 256.

¹¹ *Bohn v. Brown*, 33 Mich. 257.

¹² *Cable v. McCune*, 26 Mo. 371, 72 A. D. 214.

¹³ *Lininger v. Botsford*, 32 Cal. App. 386, 163 Pac. 63; *Damiano v. Bunting*, 40 Cal. App. 566, 181 Pac. 232.

¹⁴ *Kelly v. Clark*, 21 Mont. 291, 53 Pac. 959, 69 A. S. R. 668, 42 L. R. A. 621.

the amount to be paid by each in order to raise a fund to pay the debts of the corporation, by the weight of authority the statute of limitations does not commence to run until these matters have been judicially ascertained and an order made for the payment thereof.¹⁵ Under a very similar statute, however, it has been held that a right to proceed against stockholders accrued immediately upon the appointment of a receiver, and that the statute commenced to run from that date, and not from the date of the assessment made in a proceeding subsequently commenced, by the receiver.¹⁶

Where the statute permits actions against stockholders by a judgment creditor where execution in his behalf against the corporation has been returned unsatisfied, the statute does not run in favor of the stockholder until such execution has been returned,¹⁷ provided there has been no unreasonable delay in securing the issuance of the execution, and a delay in this regard of eight months has been held not to be unreasonable.¹⁸

Under the California Code, which requires that actions to enforce the liability of stockholders of corporations as fixed by the constitution must be brought within three years after the liability of the stockholder has accrued, the right of action accrues and the statute begins to run from the date the debt of the corporation was contracted.¹⁹

And the fact that the corporation, after contracting a debt, executes its note in renewal but not in payment does not extend the time limit.²⁰

¹⁵ *Bernheimer v. Converse*, 206 U. S. 516, 27 S. C. R. 755, 51 L. Ed. 1163; *Flynn v. American Banking & Trust Co.*, 104 Me. 141, 69 Atl. 771, 129 A. S. R. 378, 19 L. R. A. (N. S.) 428; *Mister v. Thomas*, 122 Md. 445, 89 Atl. 844.

¹⁶ *Willius v. Beyer*, 100 Minn. 548, 111 N. W. 388.

¹⁷ *Vaughn v. Alabama Nat. Bank*, 143 Ala. 572, 42 So. 64, 5 A. C. 665.

¹⁸ *Douglass v. Loftus*, 85 Kan. 720, 119 Pac. 74, A. C. 1913A 378, L. R. A. 1915B 797.

¹⁹ *Royal Trust Co. v. MacBean*, 168 Cal. 642, 144 Pac. 135; *Realty & Rebuilding Co. v. Rea*, 184 Cal. 565, 194 Pac. 1024. Although section 351 of the Code of Civil Procedure excludes from the period within which actions may be commenced the time during which the defendant may be absent from the state, that section is inapplicable to actions against stockholders on a liability created by law.—*King v. Armstrong*, 9 Cal. App. 368, 99 Pac. 527.

²⁰ *O'Neill v. Quarnstrom*, 6 Cal. App. 469, 92 Pac. 391.

Where the liability is based upon the breach of a contract, the cause of action accrues at the time of the breach.¹ And where the liability is based upon a claim for damages against a corporation for negligently killing a person, the right of action accrues and the statute commences to run in favor of stockholders when the accident occurred, and not when judgment was rendered against the corporation for damages for the debt.²

¹ Johnson v. Hinkel, 29 Cal. App. 78, 154 Pac. 487.

² Re Putnam, 193 Fed. 464, 469.

CHAPTER XXXIV.

ASSESSMENTS.

- § 560. Power to Levy Assessments.
- § 561. Necessity of Strictly Following the Statutory Procedure.
- § 562. Waiver of Statutory Levy of Assessment.
- § 563. What Stock May Be Assessed, and Who Are Liable.
- § 564. Liability of Equitable Owners to Payment of Assessment.
- § 565. Non-Assessable Stock.
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- § 567. Resolution Levying the Assessment.
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- § 569. Notice of Assessment.
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- § 575. Extension of Time for Delinquent Sale.
- § 576. Effect of Error in Proceedings.
- § 577. Waiver of Sale and Action to Recover Assessment.
- § 578. Waiver of Sale of Delinquent Stock Under Statute.
- § 579. Effect of Forfeiture or Sale of Stock on Creditors of Stockholder.
- § 580. Reduction of Assessment.
- § 581. Remedies for Wrongful Forfeitures.

§ 560. **Power to Levy Assessments.**—At common law no assessment may be enforced against the stockholders who have fully paid the agreed price of their stock unless they have made an agreement to the contrary or the articles of incorporation so permit.¹ And this is so whether the assessment is sought to be made for the purpose of raising money needed for the operations of the corporation, or for the purpose of paying its debts.² A mere by-law is not effective to warrant an assessment where no other authority is given.³

¹ *Wall v. Basin Min. Co.*, 16 Idaho 313, 101 Pac. 733, 22 L. R. A. (N. S.) 1013; *John R. Proctor Land Co. v. Cooke*, 103 Ky. 96, 44 S. W. 391, 19 Ky. L. R. 1734.

² *Wells v. Green Bay & M. Canal Co.*, 90 Wis. 442, 64 N. W. 69.

³ *Free Schools v. Flint*, 13 Met. (Mass.) 539; *Sullivan Country Club v. Butler*, 26 Misc. Rep. 306, 56 N. Y. Supp. 1; *Enterprise Ditch Co. v. Moffitt*, 58 Neb. 642, 79 N. W. 560, 76 A. S. R. 122, 45 L. R. A. 647.

However, such a by-law may be enforceable as a contract against stockholders who agree to be bound by it though it may be void considered strictly as a by-law.⁴ In almost all jurisdictions now, however, statutes provide that under certain circumstances, when cash is needed by the corporation a uniform assessment may be levied upon the stock outstanding, outline the proper procedure therefor, and establish a means of enforcement

§ 561. Necessity of Strictly Following the Statutory Procedure.—In order that the corporation may be enabled to enforce the collection of an assessment, the precise conditions under which it may be levied must exist and the procedure for levying and collecting it must be strictly followed. A careful study, therefore, of the laws of a particular state is necessary before an attempt may safely be made to levy an assessment thereunder.

As the details are numerous and differ widely in different states, it is well to confine our examination for the present to the laws of but one state on the subject. The procedure in California and the principles upon which it is based will be found somewhat typical of that found in other states, and will, therefore, be followed herein.

An assessment levied by the directors at a meeting which is not properly called or which is not held at the proper time or in the proper manner is absolutely void, and the right to bring an action to establish that fact is not limited as to time by the sections of the law covering defects in the assessment.⁵

Under the statutes of most states, notice of an assessment must be given a stated length of time before the date fixed therein for payment. Such requirement may be waived, either by paying the assessment or by signing a written waiver. The waiver may be general, or it may relate to a single assessment. The general form may be as follows:

§ 562. Waiver of Statutory Levy of Assessment.

We, the undersigned subscribers to the capital stock of the Company, a corporation, hereby waive all the requirements of law as to notice of assessments upon the shares of stock of said corporation subscribed by us, and by each of us respectively, and as to the time and place

⁴ Blue Mountain Forest Ass'n v. Borrowe, 71 N. H. 69, 51 Atl. 670.

⁵ Cheney v. Canfield, 158 Cal. 342, 351, 111 Pac. 92, 32 L. R. A. (N. S.) 16.

of payment of any such assessments, and we hereby agree to pay to the treasurer all or any part of the amount to be paid upon our subscriptions, in such amounts and at such times and places as may be prescribed by the board of directors of said corporation.

Dated at,, 19... ..

§ 563. What Stock May Be Assessed, and Who Are Liable.

—Only the “subscribed capital stock” may be assessed, no useful purpose being served by levying an assessment upon that which has not yet been issued by the corporation. All that is necessary in order that one may be liable is that he be a stockholder; and to be such it is not necessary that his certificate shall have been issued to him.

In the case of a transfer of stock he is personally liable who, according to the books of the corporation, owned the stock on the day of the levy of the assessment. Although the stock may be forfeited in the hands of a subsequent purchaser if the assessment is not paid, the alternative remedy of the corporation, a personal suit for the amount of the assessment, is available only against the owner on the day of the levy.

* It is no defense that the assessment is levied to pay off debts contracted at a time when the stock was not owned by its present holder, such being a defense only to an action against a stockholder on his statutory liability to creditors.

Where stock is purchased and transferred on the books on the same day that the assessment is levied, the purchaser is the party personally liable unless he can affirmatively show that the assessment was levied prior to the transfer.

One to whom part paid stock has been distributed in the settlement of an estate, does not thereupon become the owner of the stock so that he is liable for the unpaid portion. Not until he has the stock entered in his name on the books does his liability begin.

§ 564. Liability of Equitable Owners to Payment of Assessment.—A trustee who has stock entered on the books of the corporation in his name as trustee for a certain other named person cannot thereby evade personal liability to the corporation for the amount of an assessment levied on the stock. While a creditor would be

compelled to look to the equitable owner, the corporation, which has had no contractual relations with any person other than the trustee, may hold the latter liable on the assessment.⁶

§ 565. Non-Assessable Stock.—The statutes of some states authorize corporations to provide in their articles of incorporation for the issue of stock upon which no assessment may be levied after it has been fully paid up. Such stock is referred to as non-assessable stock. It is within the power of a corporation to contract with a particular subscriber to its stock that after the subscription price has been paid no further assessments may be levied upon it, and such a contract will be enforced by an injunction against the sale of such stock by the corporation following an attempted assessment upon it, where the rights of creditors are not directly involved.⁷ However, where a statute prohibits any distinction or preference of any nature between shares not expressly provided for in the articles of incorporation, a provision of a contract that stock sold by a corporation shall not be assessable is void.⁸

Certain stock is sometimes designated in the certificate "non-assessable." This term is used in such cases generally, to indicate that the stock is full paid, and that it is not subject to further calls for unpaid subscriptions; and for such a purpose it is no more effective than the words "full paid" when questions arise between the corporation and the original subscriber as to the adequacy of the consideration.⁹ Non-assessability of stock need not be evidenced by the certificates of stock but may be proved by any competent evidence.¹⁰

⁶ *Union Sav. Bank v. Willard*, 4 Cal. App. 690, 88 Pac. 1098; *La Habra Oil Co. v. Francis*, 35 Cal. App. 168, 169 Pac. 401.

⁷ *Wall v. Basin Min. Co.*, 16 Idaho 313, 101 Pac. 733, 22 L. R. A. (N. S.) 1013; *Porter v. Northern Fire & Marine Ins. Co.*, 36 N. D. 199, 161 N. W. 1012.

⁸ *Martin v. Palmer Union Oil Co.*, 184 Cal. 386, 193 Pac. 950, overruling *Lum v. American Wheel & Vehicle Co.*, 165 Cal. 657, 133 Pac. 303, A. C. 1915A 816.

⁹ *Lum v. American Wheel & Vehicle Co.*, 165 Cal. 657, 667, 133 Pac. 303, A. C. 1915A 816, quoting *Scoville v. Thayer*, 105 U. S. 143, 153, 26 L. Ed. 968.

¹⁰ *Reinertsen v. Idaho Power & Concentrating Co.*, 32 Idaho 353, 182 Pac. 851.

§ 566. **Uniformity of Assessments.**—Assessments, like calls, must be uniform.¹¹ Where the stock is divided into classes, a call must operate impartially and uniformly as to all the stockholders in each class.¹² It is not necessary that each stockholder be assessed an equal amount per share, in order to effect this uniformity. As pointed out in the discussion of “calls,” those who have paid least upon their stock should be required to pay the most in the case of an assessment.¹³ In such case the rule of uniformity requires, not that the assessment shall be for a stated percentage on all the stock, but rather that the payment on each share shall be equalized.¹⁴

§ 567. **Resolution Levying the Assessment.**—The assessment must be levied by the directors and takes the form of a resolution. Great care should be taken that the resolution be in proper form and that nothing essential be omitted. Where all the stock is paid up, and the amount of the assessment on each share will be equal, such a resolution may be as follows:

Be It Resolved, That the sum of fifteen thousand dollars (\$15,000) be and is hereby called in from the stockholders of this corporation for the purpose of meeting the requirements of a resolution passed at a special stockholders' meeting held on March 11, 1926, to dispose of the present plant of this company and substitute one comprising more modern machinery, and an assessment of ten dollars for each share, be and the same is hereby levied upon each and every share of the subscribed capital stock, payable on or before the 25th day of May, 1926, to the treasurer of this corporation, at its office, No. 50 Broadway, in the city of Oakland, state of California; and that the 25th day of June, 1926, be and is hereby fixed as the day on which said assessment shall become delinquent, and the 26th day of July, 1926, be and is hereby fixed as the day for the sale of all stock delinquent upon this assessment. The secretary is hereby authorized and directed to give all notices required by this resolution, and the provisions of the statutes and by-laws of this corporation pertaining to assessments, delinquencies and sales.

¹¹ *Herbert Kraft Co. Bank v. Orland Bank*, 133 Cal. 64, 65 Pac. 143, *Yard v. Pacific Mut. Ins. Co.*, 10 N. J. Eq. 480, 64 A. D. 467; *Germania Iron Min. Co. v. King*, 94 Wis. 439, 69 N. W. 181, 36 L. R. A. 51.

¹² *Brockway v. Gadsden Mineral Land Co.*, 102 Ala. 620, 15 So. 431.

¹³ *Imperial Land, etc., Co. v. Oster*, 34 Cal. App. 776, 168 Pac. 1159; *Great Western Tel. Co. v. Burnham*, 79 Wis. 47, 47 N. W. 373, 24 A. S. R. 698.

¹⁴ *Bowen v. Kuehn*, 79 Wis. 53, 47 N. W. 374; *O'Dea v. Hollywood Cemetery Assoc.*, 154 Cal. 53, 97 Pac. 1.

§ 568. **Levy of Assessment on Partially Paid Stock.**—Let us suppose, however, that there are issued 1000 shares of stock of the par value of \$100 each, that on 250 shares represented by certificates numbered 1 to 10, there is unpaid on the subscription price \$10 per share, that on 500 shares represented by certificates numbered 11 to 20, there is unpaid \$5 per share, and that the remaining 250 shares represented by certificates numbered 21 to 30 are full paid. It would be necessary, in order to levy an assessment on shares 11 to 20 and at the same time comply with the law that all assessments must be uniform, to assess each of shares 1 to 10 for \$5 in excess of the amount levied on each of shares 11 to 20. If shares 21 to 30 are to be assessed, \$10 must be added for each of shares 1 to 10 and \$5 for each of shares 11 to 20.

§ 569. **Notice of Assessment.**—Upon the making of the order, the secretary must cause to be published a notice thereof. Both the order and the notice must state where the assessment is payable. In general, no particular form of notice or demand is required so long as that given is sufficiently definite. A notice requiring payment to the corporate treasurer is a sufficient designation of the place of payment.¹⁵ However, it is better practice to make more than a mere statement that it is payable to the treasurer or secretary. The notice of the assessment may be in the following form:

ASSESSMENT NOTICE.

Capital Grocery Company. Location of principal place of business, San Francisco, Cal.

Notice is hereby given that at a meeting of the board of directors held on the 13th day of July, 1926, an assessment (No. 1) of five (5) cents per share was levied upon the capital stock of the corporation, payable immediately in United States gold coin, to John Hammond, treasurer, at the office of the company, room 630, No. 410 Market street, San Francisco, Cal.

Any stock upon which this assessment shall remain unpaid on the 20th day of August, 1926, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on Thursday, the 10th day of September, 1926, to pay the delinquent assessment, together with the cost of advertising and expenses of sale.

By order of the board of directors.

HENRY JOHNSON, Secretary.

Office—Room 630, No. 410 Market street, San Francisco, Cal.

July 15, 1926.

¹⁵ *Muskingum Valley Turnp. Co. v. Ward*, 13 Ohio 120, 128, 42 A. D. 191.

§ 570. **Enforcement by Forfeiture and Sale.**—While stock cannot be forfeited or sold for non-payment of assessments unless the charter or a statute expressly so provides, a right to sell it in case of default is often expressly or impliedly given by the charter or statute.¹⁶ The power is not to be implied from general provisions, nor is it incidental to the general powers of a corporation, but as a rule must come from a particular grant.¹⁷ Being, therefore, a mere creature of statute, the power to forfeit or sell shares of stock must be pursued in the strictest accordance with the terms of the statute. If the statute provides that the corporation shall have power to make by-laws providing for such sale, the passage of valid by-laws is an essential.¹⁸

If the statute requires a public sale, a private sale will not be sufficient; notice must be given as required by statute, and in general all the proceedings leading up to or involving a forfeiture or sale of delinquent shares must comply strictly with the statutory requirements.¹⁹

The notice should specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amounts due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.²⁰

§ 571. **Delinquent Sale Notice.**—Where any portion of an assessment remains unpaid on the day specified for declaring stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause a notice of delinquency to be published in

¹⁶ *Jensen v. Northwestern Underwriters' Association*, 35 N. D. 223, 159 N. W. 611; *Corbin Banking Co. v. Mitchell*, 141 Ky. 172, 132 S. W. 426, 31 L. R. A. (N. S.) 446.

¹⁷ *Minnehaha Driving Park Ass'n v. Legg*, 50 Minn. 333, 52 N. W. 898; *Clise Investment Co. v. Washington Sav. Bank*, 18 Wash. 8, 50 Pac. 575.

¹⁸ *Budd v. Multnomah St. Ry. Co.*, 15 Ore. 413, 15 Pac. 659, 3 A. S. R. 169; *Smith v. Gate City Oil Co.*, 160 Cal. 446, 117 Pac. 525; *Morris v. Metalline Land Co.*, 164 Pa. 326, 30 Atl. 240, 44 A. S. R. 603, 27 L. R. A. 305.

¹⁹ *Germantown Pass. Ry. Co. v. Fidler*, 60 Pa. 124, 100 A. D. 546; *Schwab v. Frisco Min. & Mill Co.*, 21 Utah 258, 60 Pac. 940.

²⁰ Cal. Civil Code, sec. 338.

the same papers in which the assessment notice was published.¹ Where the governing statute prescribes the time or duration of the notice and the manner of giving it, these requirements must be strictly followed or the sale will ordinarily be void.² In some states, such as California, this notice must be published for ten days in a daily paper or for two weeks previous to the date of sale in a weekly paper, but the first publication must be at least fifteen days prior to the day of sale.³ The provision requiring the first publication to be fifteen days prior to the day of sale is not complied with by publication for any less number of days,⁴ and by failure to make publication at least fifteen days prior to the date fixed for the sale, the corporation loses jurisdiction to sell the stock, unless all proceedings subsequent to levy are begun anew.⁵ The delinquent notice of sale may be in the following form:

New Era Printing Company.—Location of principal place of business, 50 Broadway, Oakland, Cal.

NOTICE.

There is delinquent upon the following described stock, on account of assessment (No. 3) levied on the 18th day of May, 1926, the several amounts set opposite the names of the respective stockholders, as follows:

Names.	No. of Certificate.	No. of Shares.	Amount.
Enos Roop	5	20	\$200
John Diggs	16	45	450
Henry Johnson	(No certificate issued)		150

And in accordance with law, and an order of the board of directors, made on the 10th day of July, 1926, so many shares of each parcel of such stock as may be necessary, will be sold at public auction at the office of the company, No. 50 Broadway, Oakland, Cal., on Saturday, the 25th day of July, 1926, at the hour of 2 o'clock p. m. of said day, to pay said delinquent assessment thereon together with costs of advertising and expenses of the sale.

J. E. WESTON, Secretary.

§ 572. Sale of Delinquent Stock.—Sufficient notice of the intention to forfeit a stockholder's shares must be given to the stock-

¹ California Civil Code, sec. 337; *San Bernardino Inv. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487.

² *Anthony v. Hillsboro Gold Min. Co.*, 58 Ore. 258, 113 Pac. 442, 114 Pac. 95; *Mitchell v. Vermont Copper Min. Co.*, 40 N. Y. Super. 406.

³ California Civil Code, sec. 339.

⁴ *Burham v. San Francisco Fuse Mfg. Co.*, 76 Cal. 26, 17 Pac. 939.

⁵ *San Bernardino Inv. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487.

holder, in default of which the forfeiture will be void.⁶ By the publication of the notice, a corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice, but no right to sell stock can accrue until the sale has been duly advertised and the date of the sale has arrived.⁷

On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for the sale, the party paying is required to pay only the actual cost of advertising, in addition to the assessment.⁸

The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and cost. The purchaser takes the title that the delinquent stockholder had.⁹

§ 573. Purchase by Corporation at Delinquent Stock Sale.—

The corporation may purchase its stock at a sale for unpaid assessments.¹⁰ Some statutes provide that if, at the sale of stock, no bidder offers the amount of the assessments, and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charge must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof.¹¹ While the stock remains the property of the corporation, it is not assessable, nor must any dividends be declared thereon; but all assessments and

⁶ *Crissey v. Cook*, 67 Kan. 20, 72 Pac. 541.

⁷ California Civil Code, sec. 340; *Imperial Land & Stock Co. v. Oster*, 34 Cal. App. 776, 168 Pac. 1159.

⁸ California Civil Code, sec. 341.

⁹ *O'Dea v. Hollywood Cemetery Ass'n*, 154 Cal. 53, 97 Pac. 1.

¹⁰ *Mitchell v. Blue Star Min. Co.*, 98 Wash. 191, 167 Pac. 130.

¹¹ California Civil Code, secs. 343, 344; *Stephens v. Lemoore Canal & Irr. Co.*, 22 Cal. App. 579, 135 Pac. 707, 714.

dividends must be apportioned upon the stock held by the stockholders of the corporation.¹²

No arrangement may be made whereby the directors or any one of them may take the stock and hold it as trustee for the corporation, voting it as he wishes. The purpose of the law is to prevent boards of directors from continuing themselves in power by secret manipulation of the stock through trustees. If such were not the object, a board of directors might secretly purchase, through a trustee, enough stock to give them, when added to that openly theirs, the balance of power whereby they might accomplish their own selfish ends, and then, having enjoyed the positive voting strength of the stock held in trust, in obedience of the provisions of the law, by giving such stock equal value with that of other owners in fixing the majority necessary to control a stockholders' meeting, they might repurchase the stock from the trustees with the corporation's moneys.¹³

§ 574. Disposition of Stock Purchased by Corporation at Delinquent Sale.—All purchases of its own stock made by any corporation vests the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or a vote of a majority of all the remaining shares. Such stock cannot be levied upon under an execution against a corporation. The corporation has no interest which it can dispose of, nor any interest which a creditor can dispose of at a forced sale.¹⁴

Such shares are dormant and can only be resuscitated by selling them and placing the selling price in the treasury. It would require corporate action to authorize the sale of these shares. The purchase has the effect of reducing the capital stock temporarily and until the shares shall be regularly reissued; so long as the stock remains in the treasury, it represents no part of or interest in the property of the corporation.¹⁵

¹² California Civil Code, sec. 343.

¹³ Lemoore Canal & Irr. Co. v. McKenna, 163 Cal. 736, 739, 127 Pac. 345.

¹⁴ Robinson v. Spaulding Gold & Silver Min. Co., 72 Cal. 32, 13 Pac. 65.

¹⁵ Tulare Irr. Dist. v. Kaweah Canal, etc., Co., 5 Cal. Unrep. 330, 44 Pac. 662.

§ 575. Extension of Time for Delinquent Sale.—In California it is provided by statute that the dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days at a time by order of the directors entered on the records of the corporation, or by the secretary or assistant secretary of the corporation when delinquent sale is restrained by order of a court or by a judge thereof; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is published at least once within two weeks prior to the time last previously set for the performance of such act.¹⁶ The notice of postponement may be as follows:

NOTICE OF POSTPONEMENT OF DELINQUENT SALE.

The day fixed for the sale of stock for non-payment of above assessment has been postponed to Monday, the 20th day of September, 1926.

By order of the board of directors.

HENRY JOHNSON, Secretary.

Office—Room 630, No. 410 Market street, San Francisco, Cal.

August 24, 1926.

This notice should be appended to the original notice and published therewith.

§ 576. Effect of Error in Proceedings.—In some states, such as California, Idaho, Montana, it is provided that no assessment is invalidated by failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.¹⁷

§ 577. Waiver of Sale and Action to Recover Assessment.—On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under these provisions of the law for the collection of delinquent assess-

¹⁶ California Civil Code, sec. 345.

¹⁷ California Civil Code, sec. 346; Idaho Comp. Stats, 1919, sec. 4748; Montana Rev. Codes 1921, sec. 5988.

ments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.¹⁸ The right to elect to sue directly for the amount of the assessment may be exercised only during and before the expiration of the time when there is a right to collect by a sale of the stock. A resolution of waiver, therefore, prior to the date of delinquency is premature and ineffective.¹⁹ So, also, where the notice of the assessment named a certain day for the sale of delinquent stock, but no delinquent notice has been published, a resolution to proceed to collect by personal action passed less than fifteen days prior to the day named for the sale, is too late, for upon the failure to publish the delinquent notice in time, the right to collect by sale ceased to exist, and there was, therefore, no remedy to "waive."²⁰ It is not necessary that action should be commenced at this time. All that is necessary is that the directors should pass a resolution of waiver and election, which may be as follows:

§ 578. Waiver of Sale of Delinquent Stock Under Statute.

Whereas, There was duly levied, on the 18th day of May, 1926, an assessment of ten dollars per share upon the capital stock of the New Era Printing Company, which said assessment became, on the 25th day of June, 1926, delinquent as to the following stockholders in the amounts set opposite their respective names:

(Here insert names and amounts.)

Resolved, That we, the directors of the New Era Printing Company, hereby waive further proceedings under Chapter II, Title I, Part IV, First Division of the Civil Code of the state of California, for the collection of delinquent assessments, and elect to proceed by action to recover the above named amounts of the said assessment and the costs and expenses already incurred.

§ 579. Effect of Forfeiture or Sale of Stock on Creditors of Stockholder. — Where the corporation has the power to forfeit the stock of delinquent subscribers, and in good faith take the necessary steps to effect the forfeiture, the contract between the

¹⁸ California Civil Code, sec. 349; Idaho Comp. Stats. 1919, sec. 4751; Montana Rev. Codes 1921, sec. 5991.

¹⁹ Bank of National City v. Johnston, 133 Cal. 185, 189, 65 Pac. 383.

²⁰ San Bernardino Inv. Co. v. Merrill, 108 Cal. 490, 494, 41 Pac. 487.

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subscriber and the corporation is terminated, and creditors have no further right against those whose stock is thus forfeited.¹

§ 580. **Reduction of Assessment.**—If, pending the collection of an assessment, the directors decide to reduce the amount of the assessment, there is nothing in the law to prevent such a course. They thereby merely waive the right to collect the whole amount of the assessment.

§ 581. **Remedies for Wrongful Forfeitures.**—A stockholder wrongfully deprived of his shares under a void assessment may either sue the corporation for their value,² or apply for a writ of mandamus to compel the corporation to open its books and permit the registry of the shares or to pay damages if the registry is impossible, or he may sue in an equitable action to vacate the sale and have the shares ordered to be delivered up and canceled and for other relief.³

¹ *Allen v. Montgomery R. Co.*, 11 Ala. 437; *American Well & Prospecting Co. v. Blakemore*, 184 Cal. 343, 193 Pac. 779, 19 A. L. R. 1087; *Crissey v. Cook*, 67 Kan. 20, 72 Pac. 541; *Leighton v. Leighton Lea Ass'n*, 122 N. Y. Supp. 139.

² *Wilson v. Colorado Min. Co.*, 227 Fed. 721, 142 C. C. A. 245; *Huey v. Patterson*, 37 Cal. App. 335, 174 Pac. 939; *Allen v. American Bldg. Ass'n*, 49 Minn. 544, 52 N. W. 144, 32 A. S. R. 574.

³ *Herbert Kraft Co. Bank v. Orland Bank*, 133 Cal. 64, 65 Pac. 143.

CHAPTER XXXV.

MEETINGS OF STOCKHOLDERS.

- § 582. Necessity for Stockholders' Meetings.
- § 583. Validity of Action Taken at Meetings.
- § 584. Kinds of Meetings—Regular and Special.
- § 585. Calling the Meeting.
- § 586. Resolution Calling Special Meeting of Stockholders.
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- § 590. Call by President for Special Meeting of Stockholders.
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- § 624. Reports of Committees.
- § 625. Report of Committee on Offer on New Site for Printing Office.
- § 626. Election of Directors.
- § 627. Unfinished Business.
- § 628. New Business.
- § 629. Adjournment.
- § 630. Conduct of Special Meetings.

§ 582. **Necessity for Stockholders' Meetings.**— The stockholders being the ultimate source of all authority in a corporation, it is necessary that they should meet from time to time in order that the corporate machinery may be kept in motion. Certain substitutes for meetings have been noted, such, for instance, as a two-thirds consent to adopt or to amend by-laws. But, for certain purposes, such as the election of directors, meetings are indispensable.

The act of a majority of the stockholders, expressed elsewhere than at a meetings of stockholders, as where the assent of each one is given separately and at different times, is not binding on the corporation.¹ After a stockholders' meeting is organized the majority cannot legally withdraw and organize another meeting, and if they do so, the proceedings of the seceders are illegal, and they are bound by the proceedings of the first meeting despite their withdrawal.²

§ 583. **Validity of Action Taken at Meetings.**— Whatever action may have been taken by stockholders in meeting assembled depends for its validity entirely upon the authority of such a body to so assemble and to act in such manner as it may have done in order to effect its purpose. The statutes of some states prescribe what meetings and at what times they must be held, by whom they may be called, what notice must be given, who may vote thereat, how many shall constitute a quorum, and the procedure to be followed. In some states some of these matters are left to the by-laws for regulation. Again, the requirements may differ according to the purpose for which the meeting may be called. In every case, however, care

¹ *Duke v. Markham*, 105 N. C. 131, 10 S. E. 1017, 18 A. S. R. 889; *Dennis v. Joslin Mfg. Co.*, 19 R. I. 666, 36 Atl. 129, 61 A. S. R. 805.

² *Commonwealth v. Vandegrift*, 232 Pa. 53, 81 Atl. 153, A. C. 1912C 1267, 36 L. R. A. (N. S.) 45.

should be taken to see not only that the by-laws have been followed but also that the by-laws covering the particular meeting and proposed action are not in conflict with the statutes of the state. In most states, any vote or election had other than in accordance with the provisions of the law is voidable at the instance of absent or any stockholders or members. Individual stockholders are bound by the action of the majority at corporate meetings of which due notice is given, although such individual stockholders are not represented at such meetings.³

§ 584. Kinds of Meetings—Regular and Special.—Meetings of stockholders naturally classify themselves as regular meetings and special meetings. In the former class are those meetings which are held in accordance with statute or by-laws at stated times, as quarterly or annually. A special meeting is held, of course, only as occasion demands. Meetings may be called for countless purposes, and the manner of calling them and the proper course of procedure differs not only in different kinds of corporations but also in the different states.

§ 585. Calling the Meeting.—The organization meeting may be called by order of the acting president, or by the incorporators, or may be held by consent. It is customary to provide in the by-laws that the directors may attend to the procedure of calling the annual or other regular meetings, and that they may call special meetings as they see fit, or must call a special meeting upon the request of a certain part of the outstanding stock, say one-third. However a special meeting be initiated, whether by the stockholders or by the board of its own volition where action by the board of directors is required, it will act, and call the meeting by resolution. Where, however, the charter or by-laws of a corporation require meetings to be called by a particular authority, and the provisions are mandatory, the requirements must be complied with or the meeting will not be legal.⁴

§ 586. Resolution Calling Special Meeting of Stockholders.—In taking the initiative, the directors may pass the following resolution:

³ *Hinds & Adams Counties v. Natchez, J. & C. R. Co.*, 85 Miss. 599, 38 So. 189, 107 A. S. R. 305.

⁴ *Whipple v. Christie*, 122 Minn. 73, 141 N. W. 1107, A. C. 1914D 856.

Be It Resolved, That a special meeting of the stockholders of the New Era Printing Company be and is hereby called to be held at the office of said corporation on Tuesday, the 9th day of March, 1926, at 10 o'clock a. m., for the purpose of considering and acting upon a proposition to dispose of the present plant of this company and substitute one comprising more modern machinery; and the secretary is hereby authorized and directed to give notice of said meeting as required by the by-laws.

§ 587. Request to Directors by Stockholders to Call Stockholders' Meeting.—If a certain proportion of the stockholders desire a meeting called, they may present a request in writing to the directors. No formality is required. It may specify a date or simply request that the meeting be called at an early date, leaving the date to be fixed by the board initialing the call. It is usual, however, for the purpose of the meeting to be stated in the request. The following will serve as a request:

To the the Board of Directors of the New Era Printing Company:

The undersigned stockholders of the New Era Printing Company, constituting more than one-third of the subscribed capital stock of said corporation, hereby request that a special meeting of the stockholders be called, to be held at the office of said corporation at an early date, not to exceed ten days from this date, to consider the proposition of disposing of the present plant and substituting one comprising more modern machinery.

Dated March 11, 1926.

E. P. JONES, holder of 10 shares.

M. L. BENNETT, holder of 25 shares.

ASA ROBERTS, holder of 400 shares.

A resolution of the board of directors carrying the request into effect should then be passed.

§ 588. Request to President to Call Stockholders' Meeting.—If the by-laws authorize the president to act upon such requests without further action by the board, the following request may be addressed directly to the president:

To the President of the New Era Printing Company:

The undersigned, holding a majority and more of the entire voting stock of the New Era Printing Company, hereby request that you call a special meeting of the stockholders of said corporation, to be held at the office of the company, 50 Printing House Square, Washington, D. C., at 10 o'clock a. m., on the 15th day of May, 1926, for the purpose of considering and acting upon a proposition to remove the plant of said company to a new site,

and the transaction of all such other business as properly pertains to and is connected with such removal.

Dated this May 4, 1926.

E. P. JONES, owning 10 shares.

ASA ROBERTS, owning 400 shares.

ROBERT AINSLIE, owning 100 shares.

§ 589. Instruction by President to Secretary to Give Notice of Special Stockholders' Meeting.—In the foregoing case the request really constitutes the call, and all that the president needs to do is to supplement it with his formal endorsement or approval, directed to the secretary which may be as follows:

To the Secretary of the New Era Printing Company:

In compliance with the within (or foregoing) request, and for the purposes set forth therein, you are hereby instructed to send out notices, in accordance with the by-law requirements of the company, for a special meeting of its stockholders, to be held in the office of the company at 10 o'clock a. m., on the 15th day of May, 1926.

Washington, D. C., May 4, 1926.

JAMES WILLARD, President.

§ 590. Call by President for Special Meeting of Stockholders.—In corporations, generally, the president may call a special meeting at will, without waiting for a resolution by the board, or a request by stockholders. Such a call by the president may be as follows:

The New Era Printing Company,

J. F. Weston, Esq., Secretary.

I hereby call a special meeting of the stockholders of the New Era Printing Company, to be held at the office of said corporation, No. 50 Printing House Square, in the city of Washington, D. C., on the 15th day of May, 1926, for the purpose of considering and acting upon a proposition to move the plant of said company to a new site, and to transact all business as properly pertains to and is connected with such removal. Please give notice of said meeting to the stockholders of said corporation in accordance with the by-laws.

Dated May 4, 1926.

Respectfully,

JAMES WILLARD, President.

§ 591. Mandamus to Compel Calling of Stockholders' Meeting.—Where the officers whose duty it is to issue the call or give notice of the meeting of stockholders either fail or refuse to do so, the stockholders are not without remedy, for they may avail them-

selves of the remedy by mandamus to compel the board of directors to issue the call.⁵ The imposition of the duty to call meetings upon the officers best qualified to perform it does not relieve the corporation itself from the responsibility for causing that duty to be performed, and action may be taken against the corporation to compel performance of such duty.⁶

§ 592. Notice of Meetings.—Where the meeting is a general or stated one, provided for in some resolution or by-law, notice of the time and place of the meeting is, in the absence of a different provision in the charter or by-laws of the company, not necessary.⁷ In such case each member is presumed to have notice of the day fixed for the meeting. But if the meeting be a special one, personal notice if practicable, is necessary to each member, unless all are present and participate in the proceedings.⁸ A by-law, which was designed to fix the time of the annual meeting and election of directors, but which fails to specify the hour of the day for the meeting, is not a sufficient notice or an effective method for dispensing with notice.⁹ Such notice, however, need not be given where the place, day, and hour are fixed by the regulations adopted by the stockholders.¹⁰ Only those persons who are entitled to vote need be served with notice of the stockholders' meeting.¹¹

§ 593. Notice of Meeting by Whom Given.—The by-laws usually designate the officer whose duty it is to give notice of all

⁵ *Powers v. Marine Engineers Ben. Ass'n*, 52 Cal. App. 551, 199 Pac. 353; *Bassett v. Atwater*, 65 Conn. 355, 32 L. R. A. 575, 32 Atl. 937; *Sheppard v. Rockingham Power Co.*, 150 N. C. 776, 64 S. E. 894.

⁶ *Potomac Oil Co. v. Dye*, 14 Cal. App. 674, 113 Pac. 126, 130.

⁷ *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371, 55 N. W. 547, 21 L. R. A. 174; *Jones v. Concord, etc., R. Co.*, 67 N. H. 119, 38 Atl. 120; *Doernbecher v. Columbia City Lumber Co.*, 21 Ore. 573, 28 Pac. 899, 28 A. S. R. 766; *State ex rel. Carpenter v. Kreutzer*, 100 Ohio 246, 126 N. E. 54, 8 A. L. R. 676.

⁸ *Stow v. Wyse*, 7 Conn. 214, 18 A. D. 99.

⁹ *San Buenaventura Mfg. Co. v. Vassault*, 50 Cal. 534.

¹⁰ *State ex rel. Carpenter v. Kreutzer*, 100 Ohio 246, 126 N. E. 54, 8 A. L. R. 676.

¹¹ *McDaniels v. Flower Brook Mfg. Co.*, 22 Vt. 274; *Cleveland City Ry. Co. v. First Nat. Bank*, 68 Ohio 582, 67 N. E. 1075; *Guaranty Loan Co. v. Treadwell*, 53 Cal. App. 538, 200 Pac. 653.

meetings. The directors are the proper officers to cause to issue and be given the legal notice of the time and place of the stockholders' meeting when the by-laws do not designate the same.¹² If the by-laws of a corporation require "due notice" of a meeting but do not prescribe by whom it shall be given, any officer may give it.¹³ If, however, a statute or by-law prescribes by whom the notice shall be given, a notice by any other person is ineffectual.¹⁴ Where a statute requires the meeting to elect directors to be called by the directors or by any two stockholders, a special meeting called by the president is invalid, notwithstanding a by-law authorizing the president to call such a meeting.¹⁵ Where the power to call corporate meetings is given to the board of directors, a notice given by the president and secretary is of no effect.¹⁶ Similarly, where the power to call meetings is in the president a notice by a director is insufficient.¹⁷ If the power to call meetings is in the board of directors, the notice must be signed by the directors or show that it is given pursuant to their official action.¹⁸ A substantial compliance with a requirement that the notice shall be given by a particular officer is sufficient.¹⁹

§ 594. Manner of Giving Notice of Meeting.—In the absence of a statute or by-law authorizing some form of substituted notice the notice of a corporate meeting must be personal.²⁰ If the manner in which notice shall be given is prescribed no other mode will suffice. Thus if notice given personally or by mail is required by a by-law, a published notice is unavailing.¹ So where posting and publication are required, posting alone is insufficient.² Where writ-

¹² *Walsh v. State*, 199 Ala. 123, 74 So. 45, 2 A. L. R. 551.

¹³ *West Koshkonong Congregation v. Ottesen*, 80 Wis. 62, 49 N. W. 24.

¹⁴ *Riggs v. Polk County*, 51 Ore. 509, 95 Pac. 5; *Minneapolis Times Co. v. Nimocks*, 53 Minn. 381, 55 N. W. 546.

¹⁵ *Grant v. Elder*, 64 Colo. 104, 170 Pac. 198.

¹⁶ *Matthews v. Columbia Nat. Bank*, 79 Fed. 558.

¹⁷ *Smith v. Dorn*, 96 Cal. 73, 30 Pac. 1024.

¹⁸ *Lawyers Advertising Co. v. Consolidated Ry. Lighting Co.*, 187 N. Y. 395, 80 N. E. 199.

¹⁹ *Whipple v. Christie*, 122 Minn. 73, 141 N. W. 1107, A. C. 1914D 856.

²⁰ *Bank of Little Rock v. McCarthy*, 55 Ark. 473, 18 S. W. 759, 29 A. S. R. 60; *Harding v. Vandewater*, 40 Cal. 77; *Stow v. Wyse*, 7 Conn. 214, 18 A. D. 99.

¹ *Charter Gas Engine Co. v. Charter*, 47 Ill. App. 36.

² *Goulding v. Clark*, 34 N. H. 148.

ten notice is required, a verbal notice is not good. A verbal notice is, however, sufficient in the absence of any by-law or statute requiring written notice.³ So if the by-law requires notice to be given by mail "or in other ways" verbal notice left at the home of the person to be notified is sufficient.⁴ If authorized by a by-law, notice given by mail is good; and the presumption of law is, that communications so sent were delivered.⁵ The affidavit of the secretary of the corporation that he mailed notices is sufficient proof of mailing them.⁶ Proof of publication may generally be made by the affidavit of the publisher.⁷

§ 595. Personal Notice of Annual Meeting.

Office of New Era Printing Company,
50 Printing House Square,
Washington, D. C., May 4, 1926.

To Mr. E. P. Jones.

Please take notice that the annual meeting of the stockholders of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, Washington, D. C., on the 15th day of May, 1926, at 10 o'clock a. m., for the election of directors, for the ensuing year, and the transaction of such other business as may come before the meeting. The transfer books will be closed at 5 o'clock p. m., May 5, 1926, and remain closed until 10 o'clock a. m., May 16, 1926.

Respectfully,

J. F. WESTON, Secretary.

§ 596. Published Notice of Annual Meeting.

New Era Printing Company:

The annual meeting of the stockholders of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the city of Washington, D. C., on the 15th day of May, 1926, at 10 o'clock a. m., for the purpose of electing directors, and for the transaction of such other business as may be brought before said meeting. The stock transfer books will be closed at 5 o'clock p. m. of May 15, and remain closed until 10 o'clock a. m., May 16, 1926.

J. F. WESTON, Secretary.

³ O'Rourke v. Grand Opera House Co., 47 Mont. 459, 133 Pac. 965.

⁴ Williams v. German Mutual Fire Ins. Co., 68 Ill. 387.

⁵ Stockton Combined Harvester, etc., Works v. Houser, 109 Cal. 1, 41 Pac. 809; Ashley Wire Co. v. Illinois Steel Co., 164 Ill. 149, 45 N. E. 410, 56 A. S. R. 187.

⁶ Dolbear v. Wilkinson, 172 Cal. 366, 156 Pac. 488, A. C. 1917E 1001.

⁷ Callahan v. Chilcott Ditch Co., 37 Colo. 331, 86 Pac. 123.

§ 597. Requirements of Notice of Special Meeting. — The notice calling special meetings of the stockholders must state the nature of the business proposed to be transacted thereat.⁸ Even at common law, notices of meetings for any special and exceptional purpose were required to specify the object of the call.⁹ In the absence of a notice specifying that such is one of the purposes of the meeting, a special meeting will not be authorized to elect directors,¹⁰ or to pass a resolution voting stock to a director,¹¹ or to impose personal liability on the stockholders for the debts of a corporation.¹² So, a notice stating that the purpose of the meeting is "to transact such business as may come before said meeting," is not a notice that the election of directors, or any other matter, is to be taken up.¹³

§ 598. Personal Notice of Special Meeting.

May 4, 1926.

To Mr. E. P. Jones:

Please take notice that, pursuant to the call of the president, a special meeting of the stockholders of the New Era Printing Company will be held at the office of said company, No. 50 Printing House Square, in the city of Washington, D. C., on the 15th day of May, 1926, at 10 o'clock a. m., for the purpose of considering and acting upon a proposition to move the plant of said company to a new site, and to transact all such other business as properly pertains to and is connected with such removal.

Respectfully,

J. F. WESTON, Secretary.

§ 599. Published Notice of Special Meeting of Stockholders.

Notice is hereby given that a special meeting of the stockholders of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the city of Washington, D. C., on the 15th day of May, 1926, at 10 o'clock a. m., for the purpose of considering and acting upon a proposition to move the plant of said company to a new site, and to transact all such other business as properly pertains to and is con-

⁸ *May v. Willis*, 8 Hawaii 178; *Warner v. Mower*, 11 Vt. 385; *Asbury v. Mauney*, 173 N. C. 454, 92 S. E. 267.

⁹ *Tuttle v. Michigan Air-Line R. Co.*, 35 Mich. 247.

¹⁰ *Dunster v. Bernards Land & Sand Co.*, 74 N. J. Law 132, 65 Atl. 123.

¹¹ *United Gold & Platinum Mines Co. v. Smith*, 44 Misc. Rep. 567, 90 N. Y. Supp. 199.

¹² *Asbury v. Mauney*, 173 N. C. 454, 92 S. E. 267.

¹³ *Dolbear v. Wilkinson*, 172 Cal. 366, 156 Pac. 488, A. C. 1917E 1001.

nected with such removal. Said meeting has been called by order of the president of said corporation.

Washington, D. C., May 4, 1926.

J. F. WESTON, Secretary.

§ 600. Notice of Annual Meeting United States Steel Corporation.

Notice is hereby given that the thirteenth annual meeting of the stockholders of the United States Steel Corporation will be held at the principal office of the corporation, at the Hudson Trust Company, 51 Newark street, in the city of Hoboken, county of Hudson, New Jersey, on Monday, the 19th day of April, 1926, at 12 o'clock noon, for the transaction of any and all business that may come before the meeting, including considering and voting upon the approval and ratification of all purchases, contracts, acts, proceedings, elections, and appointments by the board of directors or the finance committee since the twelfth annual meeting of the stockholders of the corporation on April 21st, 1925; and all matters referred to in the proceedings of the board of directors and in the twelfth annual report to the stockholders, which, until the meeting, will be open to examination by stockholders of record during business hours at the New York office of the corporation, 71 Broadway; the election of eight directors to hold office for three years; and the election of independent auditors to audit the books and accounts of the corporation at the close of the fiscal year.

The stock transfer books will be closed at the close of business on Tuesday, the 16th day of March, 1926, and will be reopened at 10 o'clock in the morning of Tuesday, April 20, 1926.

THOMAS CATOR, Secretary.

Hoboken, New Jersey, February 17, 1926.

§ 601. Waiver of Notice.—A convenient method of insuring unquestioned validity of the proceedings taken at a meeting is to obtain a waiver of notice from every stockholder. This method is specially recommended when it is desired to hold a meeting earlier than it could be held if the full legal notice were given according to the statute or by-laws.

When the stockholders are few and easily accessible, the officers of the corporation well known to the stockholders, and the stockholders harmonious, it is often convenient to procure a formal waiver of notice, especially if it be desirable to hold a special meeting at an earlier date than the time specified in the by-laws, or statutes, for giving notice. By this method, a meeting may sometimes be held within a few hours after the occasion for the meeting arises. Such waivers should be in writing, filed with the secretary; and the minutes should clearly refer to such waiver and filing as to absent

stockholders, in connection with a statement as to those present. It may be remarked that a waiver is as effectual for an annual, as for a special meeting. In either case, care should be taken that there is a waiver on file for each and every stockholder not actually notified or in attendance.

It is well established that the stockholders of a corporation may waive a by-law, charter or statutory requirement for the giving of notice of corporate meetings to them.¹⁴ This may be done either expressly, or their acts may be such as to constitute a waiver of notice.¹⁵ However, the fact that all the stockholders know in some other way than the one described of the time and place of the meeting does not constitute a waiver.¹⁶

§ 602. What Constitutes Waiver of Notice.—The requirements for notice of a stockholders' meeting have been held to be waived by written waiver of notice.¹⁷ Waiver of irregular notice or lack of notice may result from the subsequent acts of stockholders.¹⁸ The presence of a stockholder at a meeting coupled with his participation therein constitutes a waiver of any irregularity of notice.¹⁹ This rule also applies where a stockholder participates in a meeting by proxy.²⁰ It has been held that a stockholder who is present in person or by proxy cannot complain that notice of the meeting has not been given to others.¹

¹⁴ Bridgeport Electric & Ice Co. v. Meader, 72 Fed. 115, 30 U. S. App. 580, 18 C. C. A. 451; Nelson v. Hubbard, 96 Ala. 238, 11 So. 428, 17 L. R. A. 375; San Buenaventura Com. Min., etc., Co. v. Vassault, 50 Cal. 534; Lowe v. Los Angeles Suburban Gas Co., 24 Cal. App. 367, 141 Pac. 399; Tompkins v. Sperry, Jones & Co., 96 Md. 560, 54 Atl. 254; In re Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502; Vrooman v. R. P. Vansant Lumber Co., 215 Pa. 75, 64 Atl. 394; Smith v. Stone, 21 Wyo. 62, 128 Pac. 612.

¹⁵ In re Hammond, 139 Fed. 898.

¹⁶ People v. Matthiessen, 193 Ill. App. 328, 269 Ill. 499, 109 N. E. 1056, A. C. 1916E 1035.

¹⁷ Butler Paper Co. v. Cleveland, 220 Ill. 128, 77 N. E. 99, 110 A. S. R. 230.

¹⁸ Vrooman v. R. P. Vansant Lumber Co., 215 Pa. 75, 64 Atl. 394; Logie v. Mother Lode Copper Mines Co., 106 Wash. 208, 179 Pac. 835.

¹⁹ Germer v. Triple-State Natural Gas, etc., Co., 60 W. Va. 143, 54 S. E. 509; Larkin v. Maclellan, 140 Md. 570, 118 Atl. 181; Howard v. Tatum, 31 W. Va. 561, 94 S. E. 965.

²⁰ In re Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502.

¹ Foote v. Greilick, 166 Mich. 636, 132 N. W. 473; Hill v. Atlantic & N. C. R. Co., 143 N. C. 539, 55 S. E. 854, 9 L. R. A. (N. S.) 606.

§ 603. Call and Waiver Combined.—The following form of waiver may readily be adapted to the needs of any meeting:

The undersigned being all the incorporators and stockholders of the New Era Printing Company, hereby call the first meeting of the stockholders to be held at room 15, No. 50 Printing House Square, in the city of Washington, D. C., on the 1st day of March, 1926, at 10 o'clock a. m., for the organization of the company and the transaction of all such business as may be incident thereto; and we hereby waive all requirements as to notice of such meeting and consent to the transaction thereat of any and all business which may come before said meeting.

Dated February 28, 1926.

E. P. JONES,
JAMES WILLARD,
M. L. BENNETT,
ASA ROBERTS,
J. F. WESTON.

The same form with appropriate change will suffice as a call and waiver for the annual, or any special stockholders' meeting.

§ 604. Power of Directors to Change Time for Regular Meetings.—Where the date for the regular meeting of the stockholders of a corporation is fixed by the charter or by-laws of a corporation, the directors have no power to change the time of the meeting unless the stockholders acquiesce, particularly where the effect of the change is to postpone an election of directors.²

§ 605. Time and Place of Meeting.—The time at which meetings of the corporation are to be held is ordinarily fixed by the charter or by-laws of the corporation or the statute under which it is formed, but in the absence of such provision corporate meetings may be held at any reasonable time.³ A provision in the charter or by-laws of the corporation, authorizing corporate meetings at a certain time, does not prevent meetings at other times on proper notice.⁴ And where the meeting is not held on the date prescribed in the by-

² *Pond v. Vermont Valley R. Co.*, Fed. Cas. No. 11,264; *Nathan v. Tompkins*, 82 Ala. 437, 2 So. 747; *Mottu v. Primrose*, 23 Md. 482; *Elkins v. Camden & A. R. Co.*, 36 N. J. Eq. 467; *Walsh v. State*, 199 Ala. 123, 74 So. 45, 2 A. L. R. 551; *State ex rel. Carpenter v. Kreutzer*, 100 Ohio St. 246, 126 N. E. 54, 8 A. L. R. 676.

³ *Sylvania & G. R. Co. v. Hoge*, 129 Ga. 734, 59 S. E. 806; *In re Long Island R. Co.*, 19 Wend. (N. Y.) 37, 32 A. D. 429.

⁴ *Beardsley v. Johnson*, 121 N. Y. 224, 24 N. E. 380, 1 N. Y. Supp. 608.

laws it may be held within a reasonable time thereafter by a call of the directors.⁵

While it is necessary that the meeting shall be held at the place designated in the notice, a substantial compliance is all that is necessary. Thus a meeting in the hall at the office door which happens to be locked is proper.⁶

In most states, the meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.⁷ Although the meaning of the phrase "principal place of business" is not defined, apparently it is not used in a sense synonymous with that of "office."⁸

It is generally recognized that a corporation receiving its charter from one state cannot hold the corporate meetings in another for the purpose of organizing, electing officers, or performing any strictly corporate functions in its organization.⁹ And it has been held by some courts that a corporation has no power to perform distinctly corporate acts, such as holding a stockholders' meeting outside of the state of its creation.¹⁰ Some courts have gone further than this and held that all proceedings of persons professing to act in capacity of corporators, when assembled without the bounds of the sovereignty granting the charter, are wholly void.¹¹ However, where a corporation is chartered by several states, the corporators or stockholders may, in the absence of any statutory provision to the contrary, hold meetings and transact corporate business in any state so as to bind the corporation in respect to its property everywhere.¹² The rule that corporate meetings cannot be held without the limits

⁵ *Walsh v. State*, 199 Ala. 486, 74 So. 45, 2 A. L. R. 551.

⁶ *Seal of Gold Min. Co. v. Slater*, 161 Cal. 621, 626, 120 Pac. 15.

⁷ California Civil Code, sec. 319; Idaho Comp. Stats. 1919, sec. 4725.

⁸ *Seal of Gold Min. Co. v. Slater*, 161 Cal. 621, 120 Pac. 15.

⁹ *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484. See, also, *Brown v. Boston & M. R. Ry.*, 233 Mass. 502, 124 N. E. 322.

¹⁰ *Harding v. American Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 74 A. S. R. 189, 64 L. R. A. 738; *Smith v. Silver Valley Min. Co.*, 64 Md. 85, 20 Atl. 1032, 54 A. R. 760; *Hodgson v. Duluth H. & D. R. Co.*, 46 Minn. 454, 49 N. W. 197; *Southern Electric Securities Co. v. State*, 91 Miss. 195, 44 So. 785, 124 A. S. R. 638.

¹¹ *Miller v. Ewer*, 27 Me. 509, 46 A. D. 619.

¹² *Graham v. Boston H. & E. R. Co.*, 118 U. S. 161, 16 S. C. R. 1009, 30 L. Ed. 196.

of the state by which the corporation is created does not necessarily apply to corporations having charters from several states.¹³

§ 606. Effect of Passing of Time for Annual Meeting.—

Where the annual meeting of stockholders is not called or held on the date prescribed in the by-laws, it becomes the duty of the directors within a reasonable time thereafter to call such annual meeting. Especially is this true when demand is made on the directors for such purpose by a stockholder. When such meeting of the stockholders is called and held, it becomes the annual meeting thereof, required to be held by the by-laws and by the statute.¹⁴

§ 607. What Constitutes a Quorum.—At all elections or votes had for any purpose in corporations formed for profit there must, in most states, be a majority of the subscribed capital stock represented, either in person or by proxy in writing. In all instances of corporations formed for purposes other than profit the by-laws may provide, usually, the number of members or stockholders that shall constitute a quorum for the transaction of business.¹⁵ In respect of business corporations, it seems that at common law those stockholders who actually assemble at a regularly convened meeting of stockholders can transact the business of the meeting regardless of whether a majority of the stock is in actual attendance.¹⁶ A majority of all of the stock of the corporation must be represented to enable a stockholders' meeting to transact business, under a statute providing that the "stockholders holding a majority of the stock at any meeting of the stockholders shall be capable of transacting the business of the meeting."¹⁷ And where the by-laws prescribe what shall constitute a quorum, a quorum must be present to transact any business except to adjourn.¹⁸ Any regular or called meeting of the

¹³ *Graham v. Boston H. & E. R. Co.*, 118 U. S. 161, 16 S. C. R. 1009, 30 L. Ed. 196; *Ohio & M. R. Co. v. People*, 123 Ill. 467, 14 N. E. 874. However, see *Aspinwall v. Ohio & M. R. Co.*, 20 Ind. 492, 83 A. D. 329.

¹⁴ *Walsh v. State*, 199 Ala. 123, 74 So. 45, 2 A. L. R. 551.

¹⁵ California Civil Code, sec. 312; Idaho Comp. Stats. 1919, sec. 4718; Montana Rev. Codes 1921, sec. 5946.

¹⁶ *Gilchrist v. Collopy*, 119 Ky. 110, 82 S. W. 1018; *Eagle Iron Co. v. Colyar*, 156 Fed. 954, 87 C. C. A. 388.

¹⁷ *Hill v. Town*, 172 Mich. 508, 138 N. W. 334, 42 L. R. A. (N. S.) 799.

¹⁸ *In re Gulla*, 13 Del. Ch. 23, 115 Atl. 317.

stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.¹⁹

§ 608. Who Are Entitled to Vote at Meetings.—The right of voting stock at corporate meetings is an incident of ownership, to be exercised in the mode and under the restrictions prescribed by the charter and by-laws,²⁰ and to deprive a stockholder of the right to vote is to deprive him of an essential attribute of his property.¹ However, in order to avoid a contest at each meeting between rival claimants of the right to vote certain stock, it is often provided by statute that every person acting therein, in person or by proxy or representative, must be a member thereof or a stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election.² In some states, a longer period than ten days is customary.³

Certain exceptions to the rule that the books of the corporation must indicate the person who is entitled to vote the stock are necessary, however, in certain cases. Thus, the shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.⁴ Such representative has the right to vote with respect to stock standing on

¹⁹ California Civil Code, sec. 312; Idaho Comp. Stats. 1919, sec. 4718; Montana Rev. Codes 1921, sec. 5946.

²⁰ Arkansas Valley Sugar Beet & Irrigated Land Co. v. Ft. Lyon Canal Co., 173 Fed. 601, 97 C. C. A. 551; Talbot J. Taylor & Co. v. Southern Pacific, 122 Fed. 147; Brewster v. Hartley, 37 Cal. 15, 99 A. D. 237; Miller v. Ratterman, 47 Ohio 141, 24 N. E. 496.

¹ Lord v. Equitable Life Assurance Soc., 194 N. Y. 212, 87 N. E. 443, 22 L. R. A. (N. S.) 420.

² California Civil Code, sec. 312; Idaho Comp. Stats. 1919, sec. 4718; Montana Rev. Codes 1921, sec. 5946; Royal Consol. Min. Co. v. Royal Consolidated Mines Co., 157 Cal. 737, 137 A. S. R. 165, 110 Pac. 123; Haynes v. Griffith, 16 Idaho 280, 101 Pac. 728.

³ Bridgers v. Staton, 150 N. C. 216, 63 S. E. 892.

⁴ California Civil Code, sec. 313; Idaho Comp. Stats. 1919, sec. 4719; Montana Rev. Codes 1921, sec. 5947; Market St. Ry. Co. v. Hellman, 109 Cal. 571, 42 Pac. 225; Schmidt v. Mitchell, 101 Ky. 570, 72 A. S. R. 427, 41 S. W. 929.

the books in the name of the testator or as the case may be on exhibiting an exemplified copy of his letters of guardianship or letters testamentary or of administration, without formal transfer of the shares on the books of the corporation to him.⁵

In the absence of statute or agreement, the right to vote stock as between the corporation and the person endeavoring to vote it, follows the legal title.⁶ And for this purpose the legal title is deemed to be in him who is the owner as disclosed by the record books of the corporation.⁷ However, under a statutory provision requiring every person acting in any election or vote, in person or by proxy or representative, to be a member of the corporation or a *bona fide* stockholder having stock in his own name on the books of the corporation,⁸ a person holding stock in a corporation as a dummy for the real owner, without any interest in the stock, which is registered in his name for the purpose of enabling the real owner to avoid certain statutory liabilities, whether such purpose would be effectual or not is not a *bona fide* holder who can be entitled to vote upon it under some of the statutes.⁹ Holders of stock which is illegally or fraudulently issued do not become stockholders and are not entitled to vote the shares so issued.¹⁰

Statutes frequently provide that except when otherwise agreed, all shares of stock standing on the books of a corporation in the name of any person as pledgee or trustee, may be represented or voted by such pledgee or trustee only when such pledgor or beneficial owner fails to represent and vote the same.¹¹

In some states, no distinction may be made between the voting

⁵ Wolfe v. Underwood, 97 Ala. 375, 12 So. 234; Market St. Ry. Co. v. Hellman, 109 Cal. 571, 42 Pac. 225; Tunis v. Hestonville, M. & F. Pass. R. Co., 149 Pa. 70, 24 Atl. 88, 15 L. R. A. 665.

⁶ Commonwealth v. Dalzell, 152 Pa. 217, 25 Atl. 535, 34 A. S. R. 640.

⁷ Royal Consol. Min. Co. v. Royal Consol. Mines Co., 157 Cal. 737, 110 Pac. 123, 137 A. S. R. 165.

⁸ Idaho Comp. Stats. 1919, sec. 4718; Montana Rev. Codes 1921, sec. 5946.

⁹ Smith v. San Francisco & N. P. R. Co., 115 Cal. 584, 47 Pac. 582, 56 A. S. R. 119, 35 L. R. A. 309. This case construing sec. 312 of the Civil Code of California would not apply in California now as the section has been amended.

¹⁰ Haskell v. Read, 68 Neb. 107, 93 N. W. 997, 96 N. W. 1007; Kimball v. New England Roller Grate Co., 69 N. H. 485, 45 Atl. 253.

¹¹ California Civil Code, sec. 313.

power of common and that of preferred stock. In the absence of statute, however, such a distinction may generally be made.¹²

§ 609. Conduct of the First or Organization Meeting.—The first, or organization meeting, is necessarily special, as at its date no by-laws have been adopted fixing a time for regular meetings. While the business to be transacted at the first meeting is important, it is well understood among the incorporators to be so, and the proceedings are usually devoid of friction or serious differences of opinion. The adoption of by-laws is the most important business to be attended to, and these are usually prepared in advance by general agreement among the incorporators, and are so framed as to best subserve and promote the corporate interests and carry out the common policy. Yet there are often matters of concern upon which it is desired that the board of directors shall take action to which their attention is called, or as to which they are instructed by motion or resolution.

The time within which such a meeting should be called to order after assembling will depend largely upon the circumstances in each case. There should be no unreasonable delay, and yet sufficient time should evidently be given to enable the members to assemble. The meeting should not be delayed so long as to create the impression that no meeting is to be held and thus cause part of the stockholders to disperse. A measure cannot, after such unreasonable delay, be legally adopted which could not have been adopted but for the delay. This rule is equally applicable to all meetings.

The minutes of this meeting should show compliance with all statutory requirements and formalities.

In a few of the states, directors are not named in the articles, but are required to be elected at this first meeting. When that is the case, the proceedings do not differ from those taken to elect at annual stockholders' meetings.

It is not often that the affairs of the corporation are in such shape as to allow the transaction of business other than that provided by statute to be done at the first meeting. Nevertheless, there is no limitation upon the powers of the stockholders to then and there consider and act upon corporate matters, except as circumscribed by

¹² *People v. Emmerson*, 302 Ill. 300, 134 N. E. 707, 21 A. L. R. 636; *Randle v. Winona Coal Co.*, 206 Ala. 254, 29 So. 790, 19 A. L. R. 118.

the terms of the articles. All other business than that usually done at such meeting should be postponed, however, until after the adoption of a code of by-laws; and it would be better if it were postponed until after all the matters necessary to complete the organization were attended to.

§ 610. Motions.—A motion is the ordinary and most convenient form in which business is presented at a meeting, whether of stockholders or of directors. The form of the motion is of no importance, so long as it correctly expresses the purpose of the mover. If the matter presented by the motion be at all complicated, it had best be presented in the form of a resolution. In some corporations, especially those organized for purposes other than for profit, all resolutions are required to be referred to a committee without debate. There, a motion would have an advantage over a resolution in this, that it would bring the matter directly before the meeting and permit of its being immediately discussed and disposed of, and that without taking the chances of an adverse report from the committee. The mover should see that the secretary understands and properly records the substance of the motion. If the secretary be in doubt as to what the motion is, he should seek information from the mover. The latter, if he deem the matter important, should furnish the secretary with a written memorandum for the purpose.

§ 611. Resolutions.—A resolution is a formal method of presenting a proposition for the consideration of a deliberative assembly. The secretary should always enter the names of the persons presenting a resolution. Resolutions range as to their length and scope all the way from a few words to several pages. If the subject be complicated, or the resolution concern a matter wherein legal conditions precedent or concurrent must be taken cognizance of, one or more preambles followed by recitals of facts, may precede the resolution proper. In other instances, the preambles constitute mere concrete arguments in support of the resolution, or resolutions. Although a resolution is the customary medium for the expression of the will of those present at a meeting of the stockholders or of the directors, it may be shown in support of action taken by

agents of the corporation that they were authorized informally at a properly called meeting.¹³

§ 612. The Rule of the Majority.—On all ordinary questions and in elections, a majority of the stock represented at a legally constituted meeting of the shareholders of a corporation is sufficient to decide any question properly presented, and a majority of all the stock is not indispensable.¹⁴ Only in certain cases excepted by statute, such, for instance, as on the question of increasing or diminishing the capital stock, is a vote representing a majority or greater proportion of the stock actually subscribed, whether represented at the meeting or not, necessary to carry a proposition.¹⁵ A stockholder who is interested personally in a matter before the meeting is not precluded by such interest from casting his votes in favor thereof. Thus a mortgagee may vote as a stockholder to ratify a mortgage proposed to be given by the corporation to him, even though without his votes the ratification would fail.¹⁶

§ 613. Conduct of Annual Meetings.—Many of the proceedings at annual meetings differ in no essential particulars from some of those at the organization meeting or at special meetings. The annual meeting, however, affording more opportunity to deal with varied matters of interest, its conduct will be gone into in some detail. The members having assembled, it is their right to control and conduct the voting as they please, subject only to the restraints imposed by statutes and by-laws. It may be remarked, however, that the transactions to be consummated at corporate meetings are usually talked over among stockholders beforehand, especially if the stockholders are few, and the corporation is, as are most trading and manufacturing companies, a "close" corporation. Where such is the case, the meeting is held simply to conform to law, the principal

¹³ *McQuaide v. Ent. Br. Co.*, 14 Cal. App. 315, 111 Pac. 927; *Jones v. Stoddart*, 8 Idaho 210, 67 Pac. 650.

¹⁴ *State v. Chute*, 34 Minn. 135, 24 N. W. 353; *Gumaer v. Cripple Creek Tunnel Transp. & Min. Co.*, 40 Colo. 1, 90 Pac. 81, 122 A. S. R. 1024, 13 A. C. 781.

¹⁵ California Civil Code, sec. 359; Idaho Comp. Stats. 1919, sec. 4756.

¹⁶ *Colgate v. United States Leather Co.*, 73 N. J. Eq. 72, 67 Atl. 657; *Middleton v. Arastraville Min. Co.*, 146 Cal. 219, 79 Pac. 889; *Green v. Felton*, 42 Ind. App. 675, 84 N. E. 166.

purpose being to have a proper record made and preserved, the proceedings being merely perfunctory, and the principal labor devolving upon the secretary. It often happens, however, that there is a contest for control, and, where that occurs, it is especially important that all important formalities should be observed.

§ 614. Organization of the Meeting.—By-laws sometimes provide that the regular officers of the corporation shall officiate at meetings of stockholders. In other corporations the matter is left entirely to the choice of those who attend. It is better, however, there being no special reason to the contrary, that the secretary should officiate, lest some one unfamiliar with the records and the method of correctly keeping the minutes be chosen, thus causing delay and confusion.

Under a by-law provision that the president and secretary of a company shall preside and keep the minutes respectively at all stockholders' meetings, they simply take their places at the appointed hour and proceed according to the usages of parliamentary law. The secretary having provided the president with the order of business, the latter calls those present to order, and states the first order of business. In the absence of the president, the vice president presides. If no one designated in the by-laws to preside is present, those present may select any one of their number to perform that duty.

If no provision is made in the by-laws with reference to the officers' or stockholders' meetings, that matter is entirely in the hands of those in attendance. In such case, any one of them may call the meeting to order and state as the first order of business the election of a presiding officer of the meeting. After the election of a chairman he will take his place and the meeting will proceed with the election of a secretary. But these are details with which most persons are familiar, and need not be further pursued.

The duties of the secretary pertaining to the minutes of stockholders' meetings are important, and are elsewhere considered in detail.

§ 615. Preparation and Calling of the Roll.—The organization of the meeting having been completed by the election of a presiding officer and secretary, the next business in order is the calling of the roll of the stockholders. There must be a preliminary call of

the roll to determine whether a quorum is present. It is of no legal consequence how the roll is called, whether in the numerical order in which the names of the stockholders appear in the certificate register or alphabetically from a list prepared in advance of the meeting. But the latter is by far the more expeditious method. In some states, at least with respect to certain classes of corporations, an alphabetical list of stockholders is required by statute to be posted up at the place of meeting, prior thereto.

The roll may be arranged in the following form:

ROLL OF STOCKHOLDERS.

Name.	No. of Shares.	Represented by
Abbott, C.	100	Self.
Bacon, J.	50	R. Bush, proxy.
Clark, A.	500	B. Clark, Admr.
Clark, Wm.	200	No one.

As the names are called and the number of shares owned stated, each person present representing his own stock should answer; likewise if any one be present, whether stockholder or not, representing an absentee by proxy, he should answer to the name of such an absent stockholder, at the same time presenting his proxy to the secretary. The secretary should, as the roll proceeds, make the appropriate entries in the third column, as shown in the above form.

When the roll is finished, the secretary should be able, in the space of a very few minutes, to announce the totals of stock represented and not represented at the meeting. If such totals show less than a quorum present, there is no alternative but to adjourn the meeting, either to a specified date, or *sine die*. If adjourned to a specified date, no new notice is legally required to be given.¹⁷ though the proper officers usually give notice voluntarily as a reminder to the stockholders. The adjourned meeting is a mere continuation of the regular meeting, and after being called to order, may be proceeded with from the point at which the adjournment was taken, just as if no adjournment had occurred. But if the regular meeting has been adjourned for want of a quorum, it is necessary that the minutes should show it. In that case, the roll must be called anew at the adjourned meeting. If still no quorum appear, those present, if so

¹⁷ *Westside Hospital v. Steele*, 124 Ill. App. 534; *Alliance Coop. Ins. Co. v. Gasche*, 93 Kan. 147, 151, 142 Pac. 882; *Clark v. Wild*, 85 Vt. 212, 81 Atl. 536, A. C. 1914C 661.

disposed, may again adjourn to a fixed date, earlier than the next annual meeting; or they may adjourn *sine die*. There is no limit to the number of adjourned meetings of a regular, or for that matter, of a special, meeting that may be taken. Of course, the presence of a quorum and the transaction of business does not stand in the way of an adjournment being taken to an intermediate date. In fact, it often occurs that business coming before a meeting cannot be finally disposed of at one session, for the reason that an intelligent decision cannot be reached without further information not then at hand, or because the business is of such vast importance as to require further time for consideration. A variety of reasons may suggest a continuance of the matter for consideration at a future date.

If a quorum appear at the date fixed for the regular meeting, or if it adjourn to an intermediate date for lack of a quorum, and a quorum then appear, and that fact be made to appear on the minutes, it is not necessary that the minutes of meetings adjourned therefrom should show a quorum present. If nothing appear to the contrary, the law will presume that all those constituting a quorum at the prior meeting returned to the adjourned meeting. Such presumption is overthrown, however, if it appear from the minutes of the adjourned meeting that a quorum was not in attendance thereat.

All proxies should be left with the secretary during the meeting, in order that any one interested may inspect them.

§ 616. Proving Notice of the Meeting.—The roll call being completed and a quorum answering, in person or by proxy, the secretary should be required to produce and file legal notice of the meeting, especially if any of the stockholders be absent, or unrepresented. It would be worse than useless to proceed to the transaction of business at a meeting illegally called and held, the proceedings of which could be set aside by any absent and dissenting stockholder; and if the proceedings have been legal, evidence of their legality should be preserved. Such proof may consist of the printed notice as published, with the publisher's affidavit thereto, and a copy of the notice mailed by the secretary to each stockholder if required by the by-laws, with his certificate or affidavit of mailing attached thereto. These should be filed and a reference to their production and filing should be entered in the minutes.

The secretary's certificate to the notice of meeting sent to the stockholders is required in the by-laws of some corporations to be furnished by him when he produces the notice for inspection at the time and place of meeting. It may be as follows:

§ 617. Secretary's Certificate of Mailing of Notice of Meeting.

District of Columbia, City of Washington, ss.

The undersigned, as secretary of the New Era Printing Company, hereby certifies that, in accordance with the by-law requirements, original notices, of which the attached "Exhibit A" to this certificate is a copy, were properly enclosed and directed, and, with postage fully prepaid, were by him mailed at Washington, D. C., to the last known postoffice addresses of each and every stockholder of record of said corporation.

Dated March 15, 1927.

J. F. WESTON, Secretary.

It is within the province of any corporation, and may be so provided in the by-laws, to require the due service of notices of meetings to be proved by the affidavit of the secretary. It is a guarantee of regularity and is very appropriate when matters of great importance are to be acted upon. The affidavit may be as follows:

§ 618. Affidavit of Mailing of Notices of Meeting.

District of Columbia, City of Washington, ss.

Comes now J. F. Weston, who, being first duly sworn, deposes and says: That he is the secretary of the New Era Printing Company; that on the 21st day of February, 1926, original notices of which the attached "Exhibit A" to this affidavit is a copy, were by him properly enclosed and directed and with postage fully prepaid were by him mailed at Washington, D. C., to the last known postoffice addresses of each and every stockholder of record of said corporation.

J. F. WESTON.

Subscribed and sworn to before me this 1st day of March,
1926.

(Notarial Seal.)

NEWTON WISHART,
Notary Public within and for
the District of Columbia.

The secretary may be required likewise to authenticate with his certificate or affidavit, the published notice. The affidavit to a published notice of a meeting may be as follows:

§ 619. Affidavit of Publication of Notice of Meeting.

District of Columbia, City of Washington, ss.

Comes now J. F. Weston, who being first duly sworn, deposes and says: That he is the secretary of the New Era Printing Company, and that the annexed notice, marked "Exhibit A," was published in the Washington Post on the 14th and 21st days of February, 1926.

J. F. WESTON.

Subscribed and sworn to before me this, the 1st day of March, 1926.

(Notarial Seal.)

NEWTON WISHART,
Notary Public within and for
District of Columbia.

§ 620. Reading and Correcting Minutes of Prior Meeting.—

The next business, after proving notice, is the reading, correcting (if necessary), and approval of the minutes of the last annual, and of any intermediate meeting, the minutes of which have not been approved. No formalities are required in the performance of this function. The approval need not be by formal motion. It is sufficient, there being no objection, if the president, at the conclusion of the reading, announces that if there be no objection, the minutes stand approved. If, however, there be a correction suggested, and any dispute arises as to the propriety of changing the minutes, it should be decided by formal vote, and if it result in a change being directed to be made, the minutes of that meeting should show the minutes as read and the correction made. The same showing should appear on the minutes which are corrected. Such correction may be shown by drawing a line in red ink through the part which was changed, without obliterating any of it, and interlining the entries directed to stand as the corrected minutes; also, by making a marginal reference to the page of the minute book where it is shown that the change was ordered. The same course should be pursued where amendments are made to minutes of meetings of the board of directors. Especially should the secretary take this precaution in a case where the change is important, for a dispute might subsequently arise as to just what correction was ordered to be made. The change might even become the basis of litigation, and it would then be to his advantage to be able to furnish conclusive proof of his authority to make the alterations.

It pertains to the regular business of an annual meeting to approve the minutes of the preceding annual meeting, and of any

intermediate meeting, whether adjourned or special. It would be the better course, however, if the minutes of annual meetings were approved at that meeting, a recess being taken to enable the secretary to write them up.

The approval of minutes of an annual meeting is not the province of a special meeting. Nevertheless, if the approval of the minutes of an annual meeting be designated in the notice for a special meeting as part of the business to be done thereat, there can be no legal objection to such approval being had..

The board of directors is a distinct body from that of the assembled stockholders, and each has legal control of its own minutes. Therefore, minutes of directors' meetings should not be read for approval or correction at stockholders' meetings; and the converse of this proposition holds good.

§ 621. Reports of Officers.—In corporations whose business is of limited scope and magnitude, there is seldom any necessity for providing in the by-laws for formal written reports by the officers. An oral statement as to the progress of the business, supplemented by the showing of the corporation's books of account, will, in the case of such corporations, answer all purposes. But even if the by-laws should require written reports, an omission of reports would not invalidate any proceeding or transaction. The same is true where the affairs of the corporation are of great magnitude, variety and importance. But in cases of the latter class of corporations, such, for instance, as railroad, banking, insurance and water companies, a report from certain officers is a matter of so much interest to the stockholders, and sometimes to the general public, that the absence of any report from them at the annual meeting would be extraordinary, and it might excite the gravest suspicions.

The order in which the reports are received is a matter of no special importance; but, usually, the president's report is first delivered. It is sometimes read, and in other instances, especially if lengthy, merely placed on file and subsequently copied or printed for the inspection of the stockholders. It may be ordered filed with or without a motion, since that is the proper disposition of it at that stage. Subsequently, its suggestions may be considered under the head of new business.

Next would naturally come the treasurer's report, followed by that of any other officer required or desiring to report.

Following this, the reports of committees would be received. Sometimes the most important business of the corporation is in the hands of standing committees, such as finance and executive committees. Subjects of importance may have been referred to a special committee of stockholders.

There is nothing irregular in taking up, considering and disposing of reports as, and when, made. It is usual, however, to order them up under the head of new business. It is the duty of the secretary to take charge of and preserve all reports made in writing, and in the case of oral reports, to make an entry of their substance in the minutes.

Reports of officers and standing committees to the annual meeting of stockholders, while one of the important features in corporations which have numerous and widely scattered stockholding and bondholding interests, are of but little moment in the ordinary business concern, or "close corporation," where the holders of the stock are few in number and all closely connected with the business. Unless there is some provision in the by-laws requiring it, neither the president nor any other officer is under any compulsion to make a report in writing; and, in probably ninety per cent of corporations, such reports as are made are oral.

The more detailed reports of officers and of the executive committee (where there is such a committee), are usually not given at stockholders' meetings, but are submitted to the board of directors, to which body any stockholder may apply for more definite information.

§ 622. The President's Report.—The president's report leads in importance. He should give a general review of the business for the preceding year, the conditions of the corporate property, and the prospects for the next year, with as much detail as he deems prudent to make public. It may be read by him or by the secretary for him. The following form may be adapted to the conditions of any corporation:

PRESIDENT'S ANNUAL REPORT.

To the Stockholders of the New Era Printing Company:

Gentlemen—It is now my duty and pleasure to report to you the condition of the business and properties of this corporation, and the outlook, as

I view it, for the next year. (Here should follow a general review of the year's business with reference to any periods of depression or prosperity, and a statement of gross financial results, which may be followed with a forecast of probabilities for the coming year.)

Respectfully submitted,

JAMES WILLARD, President.

Washington, D. C., Jan. 15, 1926.

§ 623. Report of the Treasurer.—The treasurer's report to the stockholders should deal in aggregates, or go into details, according to the nature of the business in which the corporation is engaged and its relations to other concerns engaged in like business. Often it would be impolitic to go into details, in a report to the stockholders. It should contain, under a proper heading, a showing of receipts, or articles produced, with their market value, under which will be classed the stock of merchandise or products on hand. Following this will come the heading 'Expenditures.' These may be classified thus:

Materials	\$ 8,000
Salaries	15,000
Repairs	2,500
Etc.	

Both receipt and expenditure accounts should be totaled and the balance shown. Following this the financial status of the corporation should be shown, under the heads of "Assets" and "Liabilities." In this account the plant, money, all property, and bills receivable will figure as assets; and capital stock, accounts due and unpaid, and dividends, will fall under the head of liabilities.

§ 624. Reports of Committees.—Executive committees of the board of directors do not usually report to the stockholders, but to the board. But a committee of stockholders may have been appointed at a prior meeting, either annual or special, and a report from it may be due. The report will, of course, conform to the circumstances and conclusions reached, so that forms would be of little use. Frequently committees are appointed to examine property offered to be sold to the corporation, to consider amendments to the charter or by-laws, to consider the advisability of consolidating with another corporation, and any other matter which cannot be conveniently dealt with and intelligently disposed of in detail at a meeting. The matter is often sufficiently

urgent to suggest the propriety of adjourning the meeting to an intermediate date, rather than *sine die*, which would carry the matter over a whole year, and appointing a committee to deal with the matter during the interval. The following is a report of a committee appointed to examine property offered for sale to the company:

§ 625. Report of Committee on Offer on New Site for Printing Office.

To the Stockholders:

Your committee appointed at the annual meeting of the stockholders of this corporation held on the 15th day of January, 1926, to examine the lot and improvement thereon offered by Homer Osgood for a site for its business at the price of \$15,000, respectfully report as follows:

We find that the lot without the building would sell for the amount asked for it, and the title to be good. We find the building thereon, in its present condition, unsuitable for the business of this company, but that it could be put into proper shape for said business at a cost of not exceeding \$5,000; also that it would cost at least \$10,000 to build on said lot as good a building as that already standing thereon.

In conclusion we recommend that the offer of said Osgood be accepted and that the board of directors be authorized and instructed to secure a conveyance of said lot and improvements to this company and to make payment therefor according to the terms of said offer.

E. P. JONES,
M. L. BENNETT,
ASA ROBERTS,
Committee.

§ 626. Election of Directors.—The next order after reports are received is the election of directors. This is usually the most important, and sometimes the only important, business to be transacted at a stockholders' meeting.¹⁸

§ 627. Unfinished Business.—The election of directors exhausts the regular business, which is the main purpose of the annual meeting. The next order is that of unfinished business. This head includes any subjects the consideration of which was not completed at a former meeting. It includes any matters taken up at former meetings, whether regular or special, and referred to any officer or committee, to be reported upon at the meeting then in session. If the report has been presented under the head

¹⁸ For election of directors, see chapter Corporate Elections.

of reports, such report may now be called up to be acted upon. If the report has not been presented, this is the proper stage for its presentation and for action upon it. Any stockholder in attendance may call it up under this head, if the president or chairman of the meeting should, for any cause, fail to do so; but it is peculiarly the province of the latter to call the matter to the attention of the meeting.

§ 628. **New Business.**—If any matters properly coming under the head of unfinished business should have been overlooked, they may be very properly called up and disposed of under the head of new business; or if technical objection be raised, the meeting may return to the head of unfinished business. The term new business so clearly designates the character of business to be transacted under that head that explanation is almost superfluous. Any matters of unusual importance which may have been under consideration before the board of directors, but which they did not feel authorized to finally dispose of, or did not wish to assume the responsibility of finally acting upon, would properly be considered under this head. So would any desired ratification or repudiation of action already taken by the board of directors be properly treated and disposed of as new business. So would any change of policy in the corporate affairs, any amendment of the by-laws, increase or diminution of capital stock, or disposal of funds or property of the corporation, come properly before the meeting at this stage.

§ 629. **Adjournment.**—Sometimes even the simple matter of adjournment leads to a difference of opinion and discussion, and may necessitate a formal vote. If there be no suggestion of an adjourned meeting, adjournment takes place as a matter of course when all business which has been called up for consideration has been disposed of, and no motion is necessary for the purpose. The presiding officer simply says: "If there is no other business, this meeting will stand adjourned. It is so ordered." That constitutes adjournment *sine die*. In a case of a motion to adjourn to a specified intermediate date, if there be a division and discussion, the question is settled by vote as any other question.

§ 630. Conduct of Special Meetings.—As previously stated, there is no material difference between the manner of conducting a regular and a special meeting. But, obviously, no matters required by law to be attended to at the regular meeting would be in order at a special meeting.

The meeting should be organized, the notice proved, the presence of a quorum ascertained, and the meeting proceeded with in all respects as at a regular meeting, except that no business should be transacted other than that specified in the notice, unless all the stockholders are present, or represented by proxy.

Matters specified in the call may be called up by the chairman or any stockholder present and proceeded with, and disposed of by motion or resolution. If it be a matter of considerable importance, and it usually is, it would be better to embody it in a resolution, so as to enable the secretary to keep a complete record.

Where all are present, mere dissent from the decision upon matters not specified in the notice, evidenced by voting upon the proposition, does not invalidate the action taken. But it is thought that it would be otherwise if even one of those present protested against the taking of any action on a matter not specified in the notice. The notice is required to specify the business to be done for a double purpose: first, to call the attention of the stockholder to the fact that such meeting is to be held; second, to give him time to consider how he will vote upon the proposed business.

The addition to the specification in the notice of the words, "and such other matters as may come before such meeting," does not authorize action upon any matters not specified in the notice.

CHAPTER XXXVI.

CORPORATE ELECTIONS.

- § 631. Corporate Elections—In General.
- § 632. Election of Directors.
- § 633. Voting at Election of Directors.
- § 634. Cumulative Voting.
- § 635. Canvass of the Vote.
- § 636. Conduct of Election by Inspectors.
- § 637. Certificate by Inspectors of Election.
- § 638. Postponement of Election.
- § 639. Proceedings to Invalidate an Election.

§ 631. **Corporate Elections—In General.**—Corporate elections are business affairs, not controlled by the laws affecting general elections and should be conducted in a business way and in a manner affording all stockholders the fullest liberty in expressing their wishes, disregarding technical matters which enter into general elections controlled and restricted by special statutes.¹

Extreme strictness in the compliance with the statutes or charter provisions in the election of the corporate officers is not necessary. Thus, for example, where it is provided that a certain number of directors shall be elected “out of whom” a president shall be chosen, a president and director, both of which characters are to combine in the same person, may be elected on the same ballot, and it is not necessary first to elect the person a director and thereafter elect him president.²

It has been generally held that when a person is elected to an office in a private corporation it is necessary for him to accept in order to become an officer.³ However, where no qualification is required and in the absence of an express declaration or statute or controlling usage to the contrary, a person elected to an office in a corporation is presumed to accept,⁴ and he is presumed to

¹ *Zierath Combination Drill Co. v. Croake*, 21 Cal. App. 222, 131 Pac. 335.

² *Currie v. Mutual Assur. Soc.*, 4 Hen. & M. (Va.) 315, 4 A. D. 517.

³ *Bramblet v. Commonwealth Land, etc., Co.*, 26 Ky. L. R. 1176, 83 S. W. 599; *Cameron v. Seaman*, 69 N. Y. 396, 25 A. R. 212.

⁴ *Halpin v. Mutual Brewing Co.*, 20 App. Div. 583, 47 N. Y. Supp. 412; *Lockwood v. Mechanics' Nat. Bank*, 9 R. I. 308, 11 A. R. 253.

have accepted the office with full knowledge of the by-laws of the corporation.⁵

§ 632. Election of Directors.—Power to elect directors, in the absence of provisions to the contrary, is lodged in the hands of stockholders and the corporation cannot by its by-laws, resolutions, or contracts take it away.⁶ Accordingly, the method provided by the statute for the election of the officers and provisions respecting their qualification and terms of office cannot be set aside even by vote of the majority of the stockholders.⁷

The election of directors, as a general rule, unless otherwise authorized by the statutes or the charter of the corporation must be held within the sovereignty by which the corporation was created.⁸

Generally, the only election which stockholders are called upon to hold is that of directors, the other officers of the corporation being selected usually by the board of directors so elected.⁹ Where the power to elect or appoint officers is vested in the board of directors, they cannot be elected or appointed by the stockholders.¹⁰

In most states the directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on a date prescribed by statute.¹¹ However, provisions in statutes and by-laws requiring the election of directors to be had on a specified day are usually regarded as directory, and if the election is not held on the specified day, it may be held at a later date within a reasonable time thereafter, and the directors then chosen will be directors *de jure*.¹²

⁵ Jones v. Vance Shoe Co., 92 Ill. App. 158.

⁶ Brewster v. Hartley, 37 Cal. 15, 99 A. D. 237.

⁷ Holt v. California Development Co., 161 Fed. 3, 88 C. C. A. 167.

⁸ Duke v. Taylor, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484.

⁹ Rideout v. National Homestead Ass'n, 14 Cal. App. 349, 112 Pac. 192; Mason v. Moore, 73 Ohio 275, 76 N. E. 932, 4 A. C. 240, 4 L. R. A. (N. S.) 597.

¹⁰ Walsenburg Water Co. v. Moore, 5 Colo. App. 144, 38 Pac. 60.

¹¹ California Civil Code, sec. 302; Idaho Comp. Stats. 1919, sec. 3708; Montana Rev. Codes 1921, sec. 5935.

¹² Walsh v. State, 199 Ala. 486, 74 So. 45, 2 L. R. A. 551.

§ 633. **Voting at Election of Directors.**—In most cases, the process of voting is a mere formality, the directors to be elected being determined by the different interests among themselves before the meeting. In most states the election must be by ballot.¹³ The secretary is usually entrusted to the duty of conducting the balloting, as he has the record showing those entitled to vote and to what extent. A convenient form of ballot is as follows:

By the stockholders of the Reed Electric Company, a corporation, held on the 25th day of May, 1926.

Candidate.	1000 shares.	3000 votes.
Jas. Finch	1000
Robert Wrenn	1500
Samuel Treat	500
.....		
(Signature of stockholder voting.)		

§ 634. **Cumulative Voting.**—A general practice, and one now permitted or required by the statutes of most states, and in some jurisdictions by constitutional provision, is that of cumulative voting.¹⁴ A constitutional provision is generally held to be self-executing, and does not require legislation to carry it into effect.¹⁵ Under this practice every stockholder has a right to vote in person or by proxy the number of shares standing in his name, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock may equal or to distribute them on the same principle among as many candidates as he may think fit. The principle of cumulative voting has been authorized and approved in the interest of minority representation.¹⁶

A corporation holding an election for directors is bound to follow the mode of cumulative voting and has no power to adopt any other. If, therefore, but a single director is balloted upon at a time, a majority of stockholders are enabled by combining their

¹³ California Civil Code, sec. 307; Idaho Comp. Stats. 1919, sec. 4713; Montana Rev. Codes 1921, sec. 5937.

¹⁴ Wright v. Central California Colony Water Co., 67 Cal. 532, 8 Pac. 70; Cross v. West Virginia Cent. & P. Ry. Co., 35 W. Va. 174, 12 S. E. 1071.

¹⁵ Pierce v. Commonwealth, 104 Pa. 150.

¹⁶ People's Home Sav. Bank v. Superior Court, 104 Cal. 649, 43 A. S. R. 147, 29 L. R. A. 844, 38 Pac. 452.

votes each time upon a single candidate to elect him, and by thus shaping and controlling the manner of the election it would be in the power of the majority to virtually cancel the votes of the minority and deprive them of their right to representation on the board of directors. To comply with this system of voting all of the directors to be elected must be balloted for on a single ballot.¹⁷

In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates.

§ 635. Canvass of the Vote.—As the ballots are opened and counted the result may readily be determined by tabulating the votes thus:

(THREE TO BE ELECTED)

Stockholders	Shares	Candidates				
		John Doe	Richard Roe	Jas. Dunn	Thos. Mann	Leo. Starr
Jas. Finch	600	600	1200	...	...	...
Robert Wrenn	450	400	700	...	250	...
Samuel Treat	150	...	...	150	150	150
Total.....	1200	1000	1900	150	400	150

§ 636. Conduct of Election by Inspectors.—In some states it is required by law that the election of directors shall be conducted by at least two sworn inspectors who must certify the returns. It is the privilege of the members at the meeting, and not that of the directors, to select the inspectors. The following oath may be administered to the inspectors before they assume their duties:

OATHS OF INSPECTORS.

NEW ERA PRINTING COMPANY.

Annual election, 1926.

Oath of Inspectors.

United States of America, District of Columbia, ss.

We, the undersigned, having been duly appointed inspectors of election at the annual meeting of the stockholders of the New Era Printing Company, to be held at the office of said company, 50 Printing House Square, Washington, D. C., on the 15th of January, 1926, being severally duly sworn, each for himself, and not one for another, deposes and says: I will faith-

¹⁷ Wright v. Central California Colony Water Co., 67 Cal. 532, 8 Pac. 70.

fully execute the duties of inspector of election at said meeting, according to the best of my ability and with strict impartiality.

(Notarial jurat.)

JOHN GORDON.
JAMES KNOX.

§ 637. Certificate by Inspectors of Election.—The result of the ballot having been determined, the inspectors should make the following formal return:

NEW ERA PRINTING COMPANY.

Annual election, 1926.

We, the undersigned, inspectors of election of the New Era Printing Company, hereby certify that the regular annual meeting of the stockholders of said corporation, held at its office, 50 Printing House Square, Washington, D. C., on the 15th day of January, 1926, a quorum was present, and we, after having been each of us severally and duly sworn, the oaths so administered to us being hereto attached, did conduct the election for directors of said corporation; that the result of the balloting and voting thereat was the election by the plurality vote set opposite their respective names, of the following directors, to serve for the term of one year from the date of said election:

Names.	Votes secured.
E. P. Jones	900
M. L. Bennett	900
Asa Roberts	900
James Willard	900
Robt. Ainslie	900

In Testimony Whereof, We have hereunto set our hands,
this January 15, 1926.

JAMES GORDON,
JAMES KNOX,

(Notarial acknowledgment.)

Inspectors.

§ 638. Postponement of Election.—In some states, if from any cause an election does not take place on the day appointed by law or the by-laws, or otherwise, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders.¹⁸

¹⁸ California Civil Code, sec. 314; Idaho Comp. Stats. 1919, sec. 4720; Montana Rev. Codes 1921, sec. 5948.

§ 639. **Proceedings to Invalidate an Election.**—In order to invalidate an election either by the stockholders or by the directors, held contrary to law, resort must ordinarily be had to the courts. Any stockholder may sue even if, by reason of the transfer of his stock to him on the books of the corporation within ten days before the election, he was disqualified to vote at that election. All that is necessary is that there shall have been an irregularity in the election itself.¹⁹ In many jurisdictions the statutes provide for special proceedings to determine the validity of the election of officers of private corporations.²⁰ Such proceedings are of a judicial character though instituted before a judge of a court, instead of before the court, and heard at chambers.¹

¹⁹ *Wright v. Central California, etc., Co.*, 67 Cal. 532, 8 Pac. 70.

²⁰ *Re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347, 26 A. S. R. 639, 12 L. R. A. 781.

¹ *Brewster v. Hartley*, 37 Cal. 15, 99 A. D. 237.

CHAPTER XXXVII.

PROXIES AND VOTING TRUST AGREEMENTS.

- § 640. Proxy—Definition of.
- § 641. The Right to Be Represented by Proxy.
- § 642. Form of Proxy.
- § 643. Proxy Without Limitation.
- § 644. Proxy With Additional Powers.
- § 645. Proxy in General Power of Attorney.
- § 646. Limited Proxies.
- § 647. Instruction in Proxy as to Vote for Directors.
- § 648. Statutory Life of a Proxy.
- § 649. Substitution of Proxies.
- § 650. Proxy by Executors, Administrators, Etc.
- § 651. Joint Proxies.
- § 652. Proxy to Vote Shares Owned by Corporation.
- § 653. Revocation of Proxies.
- § 654. Power of Corporation to Place Restrictions on Proxies.
- § 655. Power of Court to Compel Execution of a Proxy.
- § 656. Separation of Voting Power and Ownership.
- § 657. Voting Trust Agreement—In General.
- § 658. Voting Trust Agreement—Validity.
- § 659. Policy of the Law as to Voting Trusts.
- § 660. Pooling Agreement.
- § 660a. Voting Trust Agreement.

§ 640. Proxy—Definition of.—A “proxy,” as a proxy to vote shares given by one corporate stockholder to another, is an authority, by one having the right to do a certain thing, to another to do it.¹

§ 641. The Right to Be Represented by Proxy.—The right of voting by proxy, like that of cumulative voting, is of statutory origin; but it has become so universal a custom in the United States that the right would at the present day probably be held to exist even in the absence of statutory provisions, if provided for in the by-laws. The statute usually provides that at all meetings of stockholders of corporations organized under the laws of the state, or in the case of corporations having no capital stock, then at all meetings of the members of such corporations, only the stockholders or mem-

¹ *Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559, A. C. 1918E 247; *Tunis v. Hestonville M. & F. Pass. R. Co.*, 149 Pa. 70, 24 Atl. 88, 15 L. R. A. 665.

bers actually present may be entitled to vote on any proposition, including the election of directors and other officers of the corporation, unless proxies from absent or non-attending stockholders or members are held by some person or persons present at such meeting and are properly executed. Every such proxy must be executed in writing by the member or stockholder himself, or by his duly authorized attorney.²

§ 642. Form of the Proxy.—The form of authority so to vote is immaterial, provided the intention to substitute the person to whom it is given be made clearly to appear in writing.

It is a common practice, and also convenient as well as entirely commendable, if not perverted to unfair advantages, for the secretary to send out with the notices of stockholders' meetings, proxies in blank, with a request that the same be signed, and either returned in blank or filled out with the secretary's name inserted in the blank reserved for the attorney in fact. Such proxy can always be revoked at the pleasure of the person giving it; and this is true, although it recites that it shall be irrevocable.³

§ 643. Proxy Without Limitation.—The following form will be found adaptable to all requirements:

Know All Men by These Presents, That I hereby constitute and appoint Henry Brown my true and lawful attorney to represent me at any and all meetings, general and special, of the stockholders of the New Era Printing Company that may be held while I remain a stockholder in said corporation, and for me in my name and stead, to vote at all meetings which may be held upon the stock then standing in my name on the books of said corporation, and I hereby grant my said attorney all the power that I might or should possess if personally present at such meetings.

E. P. JONES.

Dated May 1st, 1926.

§ 644. Proxy With Additional Powers.—The following proxy contains additional powers:

Know All Men by These Presents, That I, the undersigned, have made, constituted, and appointed M. R. Reinhart my attorney in fact and proxy, for the purpose of representing and voting the stock which I own, consisting of 497 shares of the capital stock of Indian Valley Electric Light and

² California Civil Code, sec. 321b.

³ Schmidt v. Mitchell, 101 Ky. 570, 41 S. W. 929, 72 A. S. R. 427.

Power Company. This proxy is to continue in force for the period of one year unless sooner revoked by me.

I further empower my said attorney to sign my name to all consents for meetings, consents to proceedings, notices, waivers, and other papers, including consents to bond issues and ratification thereof, and any other papers and writings which may be necessary and convenient in order to enable the Indian Valley Electric Light & Power Company to issue its bonds, to amend its articles of incorporation or by-laws, or comply with any rule, regulation, or order of the state railroad commission, hereby ratifying and affirming all that my said proxy and attorney in fact may do by virtue thereof.

Dated

.....

§ 645. Proxy in General Power of Attorney.—The following is a power of attorney containing a proxy:

Know All Men by These Presents: That I, Emma Henny Anna Schultz, of the county of Alameda, state of California, have made, constituted and appointed, and by these presents do make, constitute and appoint John Schultz of said county, my true and lawful attorney for me and in my name, place and stead, and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by attachments, arrest, distress or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for me, and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants, as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, chose in action and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, and also for me deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

I further nominate and appoint the said John Schultz my attorney for me and in my name, place and stead, to grant, bargain, sell, transfer, settle over, or hypothecate for such sum or price and on such terms as to him shall seem meet, any and all shares of the capital stock of any companies

or corporations at which I may, at this time, be a stockholder, and for me, and in my name to sign and execute all necessary papers to that end.

And I hereby further appoint the said John Schultz my lawful attorney for me and in my name, place and stead, to vote as my proxy at any of the meetings of any companies of which I may be a stockholder any and all of the shares of the stock which I may hold in the said company according to the number of votes to which I would be entitled if personally present. No special power in this power of attorney is intended as a limitation upon any other power or authority more generally given herein.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

Dated at San Francisco, California, this day of April 1926.

.....

§ 646. Limited Proxies.—The above form of proxy is unlimited. However, it is customary to place some limit upon the right to vote given in the proxy. Thus, if it be desired to confine the right of the proxy to vote only such stock as stands on the books in the name of the giver of the proxy at the date of the proxy and not also that which may be acquired by him subsequently, the word “then” between the words “stock” and “standing” may be changed to “now.”

If it is desired that the proxy shall terminate at a certain time insert, in lieu of the words, “while I remain a stockholder in said corporation,” the words, “on or before,” naming a date. Such a proxy becomes void and ineffectual at the time limited, without revocation, or further act by the person giving it.

Frequently a person who is unable to attend some one particular meeting at which some matters of particular interest to him is to be voted upon finds it necessary to give a proxy specifying how his stock shall be voted upon the question. Such a specification is given in the following form:

PROXY FOR MEETING OF UNITED STATES STEEL CORPORATION.

Know All Men by These Presents, That the undersigned, Henry Madden, a stockholder in the United States Steel Corporation, does hereby constitute and appoint Thomas Brem, William Dunn, Harry Tracy, George Hahn and R. W. Force, and each of them, true and lawful attorneys, agents, and proxy of the undersigned, with all power of substitution, for and in the

name, place and stead of the undersigned, to vote upon all common stock, and all preferred stock, or either, held or owned by the undersigned, at the first annual meeting of the stockholders of the United States Steel Corporation, at Hoboken, New Jersey, on Monday, the 25th day of October, 1926, and at any and all adjournments thereof, for the transaction of any and all business that may come before the meeting, including considering and voting upon the approval of the by-laws as amended; considering and voting upon the approval and ratification of all contracts, acts, proceedings, elections, and appointments by the board of directors or by the executive committee or by the finance committee since the organization of the corporation, including the agreements with Messrs. R. N. Dodge & Co., syndicate managers, dated respectively July 1st and October 1st, 1925, and February 14th, 1926, the last being the agreement of final settlement and release, which are referred to in the notice of said meeting, and in the preliminary report to stockholders; the election of eight directors to hold office for three years, the election of independent auditors; and upon any and all matters that may come before the meeting, according to the number of votes the undersigned would be entitled to vote, if then personally present, hereby revoking any proxy or proxies heretofore given to vote upon such stock, and ratifying and confirming all that said attorneys, agents, or proxies may do by virtue hereof. A majority of all or of any of said attorneys, agents, and proxies who shall be present and act, at the meeting (or if only one shall be present and act then that one) shall have, and may exercise, all of the powers of said attorneys, agents and proxies hereunder, and they are instructed to vote in favor of the re-election of the present directors, and in favor of approving the amended by-laws, and in favor of the approval and ratification of each and every of said three agreements, and said contracts, acts, proceedings, elections and appointments.

Witness my hand and seal, this 18th day of October, 1923.

HENRY MADDEN. (Seal.)

Witness: JAMES WILSON.

§ 647. Instruction in Proxy as to Vote for Directors.—A proxy to vote for certain directors should contain such a paragraph as the following:

And the said Henry Brown is hereby instructed to vote my said stock in the election of directors as follows:

	Votes.
For Thos. Jones	90
For Charles Main	45
For Joseph Helm	45
Dated .....	.....

§ 648. Statutory Life of a Proxy.—Unless the member or stockholder executing it specifies therein the length of time for

which the proxy is to continue in force, which must be for some limited period (seven years in some states), statutes usually provide for its invalidity after a certain length of time. Thus, while a failure to specify a date for the expiration of the proxy limits its life to eleven months, a stockholder may issue a proxy for not to exceed seven years. A corporation having no capital stock may, usually, prescribe in its by-laws the length of time for which proxies may be executed.⁴

§ 649. Substitution of Proxies.— Sometimes the use of the stock at a particular meeting is deemed so important that the possible inability of the person to whom the proxy is given to act is provided against. That is accomplished by clothing him with the power to substitute another, in case he is from any cause unable, or disinclined to attend the meeting. Such proxy would be as follows:

PROXY WITH POWER OF SUBSTITUTION.

Know All Men by These Presents, That I hereby constitute and appoint Henry Brown, my true and lawful attorney, with full power of substitution and revocation, to represent me at the special meeting of stockholders of the New Era Printing Company, to be held on the 15th day of June, 1926, at 10 o'clock a.m., and for me and in my name and stead, to vote at said meeting, and at any meeting to which said meeting may be adjourned, upon the stock standing in my name on the books of said corporation upon which I may be entitled to vote at the date of said meeting, and I hereby grant my said attorney, and to any person substituted by him hereunder, all the powers that I should possess if personally present at said meeting.

E. P. JONES.

Dated May 1, 1926.

The proxy, desiring to appoint a substitute may do so by delivering to the substitute the original proxy together with the following form of substitution:

SUBSTITUTION OF PROXY.

I, John Finn, hereby constitute and appoint F. E. Bunn as my substitute under the power of substitution contained in the following proxies: (here insert description of proxies under which the proxy holder is exercising the power of substitution), to vote on all shares of stock standing in the names of the above mentioned persons (or corporations) on the books of the Market Street Railway Company, at a special (or general) meeting of the stockholders of said company, to be held on the 15th day of May, 1926,

⁴ California Civil Code, sec. 321b.

and at any adjournment thereof, with the same powers, force and effect as if I were personally present and voting.

Witness my hand this 10th day of May, 1926.

JOHN FINN.

The original proxy authorized the attorney named therein to revoke any substitution made by him and to make a resubstitution. But the original proxy given him by the stockholder may already have been delivered to the person first substituted, hence not accessible to the attorney. In such case the latter would have to execute and deliver to the person last substituted a new instrument, which may be as follows:

SUBSTITUTION OF PROXY BY ORIGINAL PROXY.

Whereas, Heretofore, to wit, on the first day of May, 1926, E. P. Jones, a stockholder of the New Era Printing Company, a corporation, executed and delivered to me a proxy reading as follows:

"Know All Men by These Presents, That I hereby constitute and
 "appoint Henry Brown, my true and lawful attorney, with full power
 "of substitution and revocation, to represent me at the special meet-
 "ing of stockholders of the New Era Printing Company, to be held
 "on the 15th day of June, 1926, at 10 o'clock a. m., and for me and
 "in my name and stead, to vote at said meeting, and at any meeting
 "to which said meeting may be adjourned, upon the stock standing
 "in my name on the books of said corporation upon which I may be
 "entitled to vote at the date of said meeting, and I hereby grant my
 "said attorney, and to any person substituted by him hereunder, all
 "the powers that I should possess if personally present at said
 "meeting.

"E. P. JONES.

"Dated May 1, 1926."

And Whereas, On the first day of June, pursuant to the authority therein given, I substituted in my place and stead James Wilkinson for the purpose of having the stock held by the said Jones represented and voted at said meeting.

Now, by virtue of the further power conferred upon me by the terms of said instrument, I hereby revoke all authority and power of the said Wilkinson, and substitute in his place and stead, and for the same purpose, George Walsh.

Dated May 10, 1926.

HENRY BROWN.

§ 650. Proxy by Executors, Administrators, Etc.—Executors, administrators, guardians, pledgees, and trustees may give proxy.⁵ In order to render valid a proxy given by an executor it must be accompanied by a specific direction as to the manner in

⁵ California Civil Code, sec. 321b.

which the vote is to be cast, with no discretion whatever in the holder of the proxy, since the discretion lodged in such a representative must be exercised by him alone and cannot be delegated.⁶ The following proxy is suitable where shares are owned by the estate of a deceased person:

PROXY BY EXECUTORS OF ESTATE.

Know All Men by These Presents, That we, A. J. Knox and B. R. Freer, executors of the estate of H. F. Jensen, deceased, do hereby constitute and appoint F. E. Bunn our true and lawful attorney for us and in our name and stead, with full power of substitution, to vote on all shares of stock standing in our name on the books of the Market Street Railway Company at a special general meeting of stockholders of said company, to be held on the 15th day of May, 1926, and on any adjournment thereof. [Give specific direction as to manner in which the vote is to be cast.]

All other proxies are hereby revoked.

Dated May 10, 1926.

A. J. KNOX,
 Executor of the Last Will and Testament of H. F. Jensen.
 B. R. FREER,
 Executor of the Last Will and Testament of H. F. Jensen.

Witness:

EVAN JACKSON.

The same form is easily adaptable by guardians, trustees and pledgees.

§ 651. Joint Proxies.—Several stockholders may join in a proxy to one and the same person. A joint proxy may be as follows:

JOINT PROXY.

Know All Men by These Presents, That we hereby constitute and appoint Henry Brown our attorney, for us and in our names, place and stead, to vote all the stock which now stands, or which may then stand in our respective names upon the books of the New Era Printing Company, a corporation, at the annual meeting of the stockholders of said corporation, to be held on the 15th day of May, 1926, at 10 o'clock a. m., at the office of said company, and at any meeting and place to which said annual meeting may be adjourned; hereby granting to our said attorney full power to act for us at said meeting, or meetings, and in our names and stead, to vote thereat, upon our said stock in the election of directors, and in the transaction of any other or further business that may be brought before said meeting, or meetings, as fully as we, and each of us, might or should do if personally present.

E. P. JONES.
 M. L. BENNETT.

Dated May 1, 1926.

⁶ State v. Voight, 17 Ohio Cir. Ct. (N. S.) 447, 2 Ohio App. 145.

§ 652. **Proxy to Vote Shares Owned by Corporation.**—A corporation owning shares of stock in another corporation is as much entitled to representation at meetings of the latter and to vote thereat as if the same shares were owned by a natural person. Such shareholding corporation may vote by an agent authorized to directly represent it, or by proxy. For convenience, and to avoid meetings of the board of directors to appoint an agent every time a meeting of the stockholders of the other corporation is called, a general power of attorney is usually given to the attorney of the stockholding company, or some other officer, with respect to such shares. Such authority may be simple in form, or it may be a regular and formal power of attorney, in legal effect, a proxy.

PROXY BY CORPORATION.

Know All Men by These Presents, That the Pacific Trust Co., trustee, hereby nominates and appoints Nevada Securities Co., a corporation existing under the laws of the state of Nevada, its true and lawful attorney, for it and in its name, place and stead to vote at any regular or special meeting of the stockholders of the Hale Mattress Co., a corporation existing under the laws of the state of Washington, all of the stock of the said Hale Mattress Co. now or hereafter standing in the name of the said Pacific Trust Co., as trustees, under the provisions of the trust agreement dated October 14th, 1926, between the said Nevada Securities Co. and said Pacific Trust Co., trustee; provided, however, that this proxy shall not be used for the purpose of voting said stock in any way inconsistent with the provisions of said trust agreement.

In Witness Whereof, The said Pacific Trust Co., trustee, hath caused these presents to be signed by its president and its corporate seal to be hereto affixed this 22d day of October, 1926.

PACIFIC TRUST CO.,
By E. R. Mellors, President.

(Seal.)

Attest:

GEORGE WEEKS, Secretary.

Sometimes, however, the shareholding interests being considerable, and the matter upon which the shares are to be voted being of great importance, special action is taken with reference thereto. The resolution of the board of directors may, in that case, be as follows:

RESOLUTION FOR PROXY OF CORPORATION.

Whereas, The board of directors of this company did, at a meeting of said board, held on the 1st day of March, 1926, adopt the following resolution:

"Resolved, That F. E. Bunn be, and he is hereby appointed the agent of this company for the purpose of attending the meetings of stockholders of

any corporation whatsoever in which this company owns or holds, or may hereafter from time to time own or hold, any portion of its capital stock, and to vote the shares of this company upon all questions that may come before such meetings."

And, Whereas, The aforesaid resolution has not been rescinded or suspended, and since the date of its adoption has been, and is now, in full force.

Now, Therefore, This corporation, The Excelsior Investment Company, acting by and through its board of directors, at a regular (or special) meeting, duly called and held on the 1st day of March, 1926, does hereby constitute and appoint the said F. E. Bunn its true and lawful attorney, with full power of substitution and revocation, to represent it at a special meeting of the stockholders of the Central Railroad Company to be held on the 25th day of March, 1926, at 10 o'clock a. m., for it and in its name and stead to vote at said meeting, and at any adjournments thereof, the stock standing in its name on the books of said company which this corporation may be entitled to vote at the date of said meeting, upon the business specified in the notice for said meeting, to wit:

A proposition to increase the bonded indebtedness of said company.

And said F. E. Bunn is hereby instructed and required to vote in the negative upon said proposition, and to so vote upon all questions arising at said meeting as will militate against the adoption of said proposition, or of any proposition having the effect to increase the bonded indebtedness of said company.

Granting unto the said F. E. Bunn, subject to the foregoing instruction and limitation, all the powers that this corporation possesses.

And we hereby certify that the above is a true copy of a resolution adopted by the board of directors of said corporation, that the same has been duly recorded in the minutes of said corporation, has never been revoked and is now in full force and effect.

(Corporate Seal.)

JAMES L. RAY,
President.
H. F. DUTTON,
Secretary.

§ 653. Revocation of Proxies.—Every proxy is revocable at the pleasure of the person executing it, unless the proxy was given for a valuable consideration and is a necessary incident to the full enjoyment of every other right acquired from the giver of the proxy.⁷ And even though given for a valuable consideration, a proxy may be revoked where it is to be used for a fraudulent purpose.⁸ And even

⁷ Witham v. Cohen, 100 Ga. 670, 28 S. E. 505; Bridgers v. First Nat. Bank, 152 N. C. 293, 31 L. R. A. (N. S.) 1199, 67 S. E. 770; Gage v. Fisher, 5 N. D. 297, 31 L. R. A. 557, 65 N. W. 809.

⁸ Reed v. Bank of Newburgh, 6 Paige (N. Y.) 337.

when, by its terms, it is made irrevocable.⁹ However, it is generally held that a proxy is irrevocable when it is based upon a consideration, or coupled with an interest, and is not contrary to public policy.¹⁰

It is not necessary that a proxy should be revoked in the exact manner provided in the instrument giving the proxy.¹¹ It may be revoked orally, or by conduct. The sale by a stockholder of his shares in a corporation will *ipso facto* revoke any proxies made or given to vote in respect of such shares.¹² And where the same person gives a subsequent proxy the last one given is to be deemed a revocation of all former ones.¹³ Also, it may be revoked where the owner of the stock attends the election in person.¹⁴ The revocation may be in general terms and thus have the effect of revoking all outstanding proxies. For a general and sweeping revocation, the following, filed with the secretary, will accomplish the desired purpose:

GENERAL REVOCATION OF PROXIES.

I hereby revoke and annul all proxies, whatever the form or name heretofore given by me as far as the same may authorize and empower any person or persons to represent me, vote in my name and stead, or to any extent, or in any wise act for me, at any meeting or meetings of the stockholders of the New Era Printing Company, a corporation.

Dated, March 1, 1926.

E. P. JONES.

The revocation may be limited to one outstanding proxy, which would not affect another given to a different person to vote other stock, or the same stock, at another meeting, or it may be in the above general form, with a clause excepting the particular proxy which it was desired to continue in force.

§ 654. Power of Corporation to Place Restrictions on Proxies.—The right to vote by proxy cannot be limited in any way

⁹ Schmidt v. Mitchell, 101 Ky. 570, 41 S. W. 929, 72 A. S. R. 427; Harvey v. Linville Imp. Co., 118 N. C. 693, 24 S. E. 489, 54 A. S. R. 749, 32 L. R. A. 265.

¹⁰ Smith v. San Francisco & N. P. Ry. Co., 115 Cal. 584, 47 Pac. 582, 56 A. S. R. 119, 35 L. R. A. 309; Boyer v. Nesbitt, 227 Pa. 398, 76 Atl. 103, 136 A. S. R. 890.

¹¹ Schmidt v. Mitchell, 101 Ky. 570, 41 S. W. 929, 72 A. S. R. 427.

¹² Bridgers v. First Nat. Bank, 152 N. C. 293, 31 L. R. A. (N. S.) 1199, 67 S. E. 770.

¹³ Pope v. Whitridge, 110 Md. 468, 73 Atl. 281.

¹⁴ Bache v. Central Leather Co., 78 N. J. Eq. 484, 81 Atl. 571; Rossing v. Bode State Bank, 181 Iowa 1013, 165 N. W. 254.

by a corporation having a capital stock. Thus, a by-law cannot limit a stockholder to the appointment of only a stockholder as his proxy.¹⁵ A statute authorizing a corporation to provide in its by-laws for "the mode of voting by proxy," refers to the preliminary requirements to be followed in order that the proxy may be entitled to vote, and does not authorize the curtailing of the right to vote by proxy, but only to regulate the exercise of the right by requiring the authority to be in writing properly witnessed, acknowledged, and filed with the records.¹⁶ But a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members.¹⁷

§ 655. Power of Court to Compel Execution of a Proxy.—While the legal right of a stockholder to vote his stock as he pleases cannot be questioned, nor can his right to confer, by proxy, upon another the right to vote it, yet no corporate authority, nor even a court, can compel him to give a proxy, in the absence of an agreement upon, or for, a valuable consideration, that he should give it.¹⁸

Where a receiver is appointed on a creditor's bill, and the property includes corporate stock, the court may compel the judgment debtor to execute a proxy to the receiver so as to enable him to vote at a corporate meeting.¹⁹

§ 656. Separation of Voting Power and Ownership.—In a number of decisions it is held to be contrary to public policy to permit or contract for a separation of the voting power of corporate stock from its beneficial ownership.²⁰ However, there is authority to the effect that it is not illegal nor against public policy to separate the voting power of the stock from its ownership. Since the statute in some states authorizes voting by proxy, and places no limitation

¹⁵ *White v. New York State Agricultural Soc.*, 45 Hun 580, 10 N. Y. S. R. 594.

¹⁶ *People's Home Sav. Bank v. Superior Court*, 104 Cal. 649, 38 Pac. 452, 43 A. S. R. 147, 29 L. R. A. 844.

¹⁷ California Civil Code, sec. 321b.

¹⁸ *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357, 35 Pac. 1045, 37 Pac. 207.

¹⁹ *Atkinson v. Foster*, 27 Ill. App. 63, affirmed 134 Ill. 472, 25 N. E. 528.

²⁰ *Harvey v. Linville Impr. Co.*, 118 N. C. 693, 24 S. E. 489, 54 A. S. R. 749, 32 L. R. A. 265; *Luthy v. Ream*, 270 Ill. 170, 110 N. E. 373, A. C. 1917B 368.

upon the right of selection, a stockholder may appoint as his proxy one who is an entire stranger to the corporation.¹

Assuming that the general policy of the law prohibits the separation of the voting power from the beneficial interest, yet such a separation is now deemed to be justified where there is a property interest to conserve, some definite policy in the interest of the corporation to be carried out, some beneficial interest of the stockholders to be served, or some purpose not unlawful of an advantageous character to the stockholders to be effectuated.²

§ 657. Voting Trust Agreement—In General.—A voting trust has been defined as an agreement which accumulates in the hands of a person or persons shares of several owners, in trust for the purpose of voting them, in order, through the selection and election of directors, to control the corporate business and affairs.³

The plan or device now more commonly adopted for the purpose of procuring and continuing the control of the corporation is to procure the stockholders or some portion of them to deposit their stock, with power to the depositary for a definite period to vote the same, the title to the stock itself being usually, though not always, transferred to the depositary upon a trust for such purpose. This form of agreement has proved better adapted to withstand the legal attacks upon it than that which merely contemplates the procuring of irrevocable proxies. It is obvious, of course, that, whatever the form of the agreement, and however skillfully it may be adapted to avoid legal objections, it will be held invalid if its purpose is to secure an illegitimate or improper advantage, to the detriment of the interests of the corporation and of the other stockholders.⁴

In the case of stockholders of a corporation organized for the purpose of marketing agricultural products, it is expressly provided

¹ *Smith v. San Francisco, etc., Ry. Co.*, 115 Cal. 584, 47 Pac. 582, 56 A. S. R. 119, 35 L. R. A. 309; *Brightman v. Bates*, 175 Mass. 105, 55 N. E. 809.

² *Boyer v. Nesbitt*, 227 Pa. 398, 76 Atl. 103, 136 A. S. R. 890.

³ *Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559, A. C. 1918E 247.

⁴ *Cone v. Russell*, 48 N. J. Eq. 208, 21 Atl. 847; *Boyer v. Nesbitt*, 227 Pa. 398, 76 Atl. 103, 136 A. S. R. 890; *Carnegie Trust Co. v. American Security Life Ins. Co.*, 111 Va. 1, 68 S. E. 412, 21 A. C. 1287, 31 L. R. A. (N. S.) 1186, *Winsor v. Commonwealth Coal Co.*, 63 Wash. 62, 114 Pac. 908, 33 L. R. A. (N. S.) 63.

in some states that the execution of pooling or voting trust agreements is not prevented by other statutory provisions.⁵

§ 658. **Voting Trust Agreement — Validity.** — Agreements between corporate stockholders, a minority in number but owning the majority of stock, made on sufficient consideration, to unite upon a course of corporate policy or action, or upon the officer whom they will elect, are valid and binding, if they do not contravene any express charter or statutory provisions, or contemplate fraud, oppression, or wrong against other stockholders, or other illegal object.⁶ Invalid provisions in a voting trust agreement do not render the whole agreement invalid, if the illegal part is separable from the valid part.⁷ Whether such an agreement is illegal, so that an action or vote under it can be set aside or is of such a character that it will not be enforced, will depend upon the object with which it is made or the acts that are done under it, and will be governed by other rules of law.⁸

§ 659. **Policy of the Law as to Voting Trusts.**—It is the policy of the law that an untrammelled power to vote shall be incident to the ownership of the stock, and a contract by which the real owner's power is hampered by a provision therein that he shall vote just as somebody else dictates is objectionable. It is against the policy of the law for a stockholder to contract that his stock shall be voted just as someone who has no beneficial interest or title in or to the stock direct, saving to himself simply the title, the right to dividends, and perhaps the right to cast the vote directed, willing or unwilling, whether it be for his interest, for the interest of other stockholders or for the interest of the corporation, or otherwise. This is against the policy of the law, whether the power so to vote be for five years or for all time. It is the policy of the law that ownership of stock shall control the property and the management of the corporation;

⁵ California Civil Code, sec. 321c.

⁶ *Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559, A. C. 1918E 247; *Thompson-Starrett Co. v. E. B. Ellis Granite Co.*, 86 Vt. 282, 84 Atl. 1017; *Clark v. Foster*, 98 Wash. 241, 167 Pac. 908.

⁷ *Venner v. Chicago City R. Co.*, 258 Ill. 523, 101 N. E. 949.

⁸ *Smith v. San Francisco, etc., Ry. Co.*, 115 Cal. 584, 47 Pac. 582, 56 A. S. R. 119, 35 L. R. A. 309; *Bowditch v. Jackson Co.*, 76 N. H. 351, 82 Atl. 1014, A. C. 1913A 366, L. R. A. 1917A 1174.

and this cannot be accomplished, and this good policy is defeated, if stockholders are permitted to surrender all their discretion and will in the important matter of voting, and suffer themselves to be mere passive instruments in the hands of some agent who has no interest in the stock, equitable or legal, and no interest in the general prosperity of the corporation. And this is not entirely for the protection of the stockholder himself, but to compel a compliance with the duty which each stockholder owes his fellow stockholders to so use such power and means as the law and his ownership of stock give him that the general interest of stockholders shall be protected and the general welfare of the corporation sustained and its business conducted by its agents, managers and officers, so far as may be, upon prudent and honest business principles and with just as little temptation to, and opportunity for, fraud and the seeking of individual gains at the sacrifice of the general welfare as is possible. This is the duty that one stockholder in a corporation owes to his fellow stockholders, and he cannot be allowed to disburden himself of it in this way. He may shirk it, perhaps, by refusing to attend stockholders' meetings or by declining to vote when called upon, but the law will not allow him to strip himself of the power to perform his duty. To this extent, at least, a stockholder stands in fiduciary relation to his fellow stockholders.⁹

§ 660. Pooling Agreement.

This memorandum of agreement, made and entered into this 12th day of April, A. D. 1926, by and between N. C. Willets of San Francisco, California, party of the first part, R. P. Ross of Memphis, Tennessee, party of the second part, the Capitol Oil Company, a corporation organized and existing under and by virtue of the laws of the state of Nevada, party of the third part, and William M. Sears of San Francisco, California, party of the fourth part, witnesseth that,

Whereas, The said parties of the first, second and third parts have this day bought and acquired from the Protective Oil Company of Nevada, one hundred and five thousand (105,000) shares of the common stock of said last named corporation, which said shares of common stock are represented and evidenced by certificates numbered fourteen, twelve and sixteen, calling for thirty-five thousand (35,000) shares each of said common stock and issued in the names of N. C. Willets, R. P. Ross and William M. Sears, trustees for Capitol Oil Company, respectively; and desire and have agreed among themselves that said stock shall for a period of five years

⁹ Shepaug Voting Trust Cases, 60 Conn. 553, 24 Atl. 32; Luthy v. Ream, 270 Ill. 170, 110 N. E. 373, A. C. 1917B 371, 372.

from this date be reserved from sale, except under the condition herein-after stated, and that they shall retain the power during that time of voting the stock so as to keep the control of the corporation from passing to persons other than themselves and those who shall with them or as their assigns become owners of portions of said stocks; and

Whereas, The said Capitol Oil Company has and does hereby appoint William M. Sears as its attorney in fact and trustee, to act for and represent the said Capitol Oil Company in all matters pertaining to this agreement and to the carrying out thereof.

Now, Therefore, It is mutually agreed by and between the parties of the first, second and third parts that they will during said period make no sales of said one hundred and five thousand (105,000) shares of stock, except under the conditions and restrictions hereinafter stated, and that they will retain the power to vote said shares in one body and as one holding of all of said shares, and that the vote which shall be cast by said shares, whether for directors or for any other purpose, shall be determined by unanimous agreement between the parties of the first, second and fourth parts.

In order to effectuate this agreement, it is further agreed that in making any sales or assignments of any of the said shares respectively belonging to them, the said parties of the first, second and third parts will cause persons buying from them, or any of them, to enter into written agreements to the effect that they and their assigns will not cause their stock to be transferred to them on the books of the company, but that they will during said period allow the same to remain on the books in the names of said Willets, Ross and Sears, trustees, for Capitol Oil Company, and that said Willets, Ross and Sears, trustees, shall have the right to vote it as aforesaid.

A draft or form of such an agreement as shall be exacted by said Willets, Ross and Sears, trustees, from the assignees from them is hereto attached, marked Exhibit A, and is hereby referred to and made a part hereof.

It is further agreed that all the foregoing stipulations, covenants and agreements shall be binding upon the successors, assigns, heirs, devisees, legatees and personal representatives of the parties hereto just as if they had been specifically above mentioned.

It is further agreed that on the death, renunciation or discharge of either said Willets or Ross, his or their successors hereunder, shall be appointed by his or their legal representatives, and in the case of the death, renunciation or discharge of said Sears, his successor shall be appointed by the Capitol Oil Company, or its successors or assigns, and in case said successors are not so appointed as aforesaid within sixty (60) days after such happening, then and in that event the survivors to this agreement shall appoint such successors.

It is further agreed that the certificates of stock of the Protective Oil Company, numbered fourteen, twelve and sixteen, issued in the names of N. C. Willets, R. P. Ross and William A. Sears, trustees for Capitol Oil Company, respectively, hereinbefore mentioned, shall be deposited,

together with a copy of this agreement, upon the execution thereof, with the American National Bank of San Francisco, to be held by the said bank in accordance with the terms hereof and for a period of five years from date hereof and thereafter, each of said certificates to be returned to said Willets, Ross and Sears, trustees for Capitol Oil Company, respectively.

Witness our hands in quadruplicate this 12th day of April, 1926.

..... (Seal.)
 (Seal.)
 (Seal.)
 (Seal.)

EXHIBIT A.

Whereas, N. C. Willets, R. P. Ross and Capitol Oil Company bought and acquired from the Protective Oil Company of Nevada one hundred and five thousand (105,000) shares of the common stock of said last named company, for the purpose of keeping control of said company in the interest of themselves and of all persons who shall buy any portion of said stock from them, and have agreed that for the period of five years from the 12th day of April, 1926, the said stock shall be kept registered in the office of the said company in the names of N. C. Willets, R. P. Ross and William M. Sears, trustees, and that the three last named parties shall vote the said stock in one block and as one holding of all of said stock at all the meetings of the stockholders and at all elections of officers; and

Whereas, The undersigned has bought from the said, shares of said stock at the cost price of dollars per share, which purchase was made subject to said agreement above mentioned.

Now it is agreed that the said stock so purchased by said shall not be transferred into his name, but that until the end of said period of five years above mentioned it shall continue to stand in the names of said Willets, Ross and Sears, trustees, and that during said period it may be voted at all meetings of stockholders and at all elections by the said Willets, Ross and Sears, trustees, as shall be determined by unanimous agreement between said Willets, Ross and Sears, trustees, or their survivors, in accordance with their agreement aforesaid;

It is expressly understood that the sale of said stock to said by said is made upon the consideration and on condition that the foregoing agreement as to the registry and voting of said stock shall be fully kept and performed by said, and that if said or his assigns shall ever fail to keep this agreement by causing said stock to be transferred from the name of said on the books of said company during said period of five years, then the sale of said stock to said shall at the option of said be voided and set aside upon the tender by said to said of the purchase price of said stock as aforesaid.

It is further agreed that all the foregoing stipulations, covenants and agreements shall be binding upon the heirs, devisees, legatees and per-

sonal representatives of said just as if they had been specifically above mentioned.

A copy of the agreement between Willets, Ross, Sears and Capitol Oil Company is attached hereto and made a part hereof.

Witness our hands this 12th day of April, 1926.

..... (Seal.)

..... (Seal.)

§ 660a. Voting Trust Agreement.

This Agreement, Made this day of January, 1927, between certain stockholders of the Jones Lumber & Supply Company, a corporation organized under the laws of the state of, and having its principal office in the city of, state of who shall become parties to this agreement by signing the same, hereinafter called the stockholders, parties of the first part, and J. H. Jones, A. A. Brown, H. L. Smith, R. H. Smith, and William Abbott, hereinafter called the trustees, parties of the second part.

Whereas, The stockholders believe it to be essential to their interests to protect themselves against the purchase of a majority of the shares of the company by parties acting on behalf of corporate or other interests, to which the rights of the remaining stockholders would be subordinated, and also believe that it is essential for the success of said company and for the best interest of all the stockholders thereof that the said company shall be managed and directed during the next five years of its existence under a definite and fixed policy to secure a union of all the interests in order to develop properly the rights, privileges, franchises, property and earning capacity of said company; and

Whereas, The stockholders believe that a higher price can be obtained for their stock by a sale of the same in lump; and

Whereas, They believe that their object can be best accomplished by acting together jointly and severally in the manner hereinafter set forth, the agreement of each constituting one of the considerations for the agreement of the others, and in particular by giving to the trustees as their agents and attorneys in fact an irrevocable power of sale upon the terms and conditions hereinafter set forth; and

Whereas, For the purpose of this protection the stockholders have requested the trustees to take and hold for the period hereinafter stated the legal title to said shares, the same to be held by them upon an active trust, and to act under the terms of this agreement and the trustees have agreed so to do.

Now, This Agreement Witnesseth: The stockholders in consideration of their mutual promises do agree to and with each other and with the trustees, and the trustees do agree with the stockholders as follows:

First: Each party hereto of the first part holding shares of the capital stock of the said Jones Lumber & Supply Company, to the number set opposite his, her or its name, as hereunto subscribed, respectively, hereby

severally agrees to deposit the same and the certificates therefor, with sufficient transfers thereof, in favor of the persons hereinbefore named as trustees, with said trustees, and to receive in exchange therefor certificates hereinafter referred to, and upon the making of such deposit all shares represented by the stock certificates so deposited shall be transferred upon the books of said Jones Lumber & Supply Company, to the names of said trustees, who are hereby fully authorized, and empowered to cause such transfers to be made, and also to cause any further transfers of said shares to be made which may become necessary through the occurrence of any change of the persons holding the office of trustees as hereinafter provided. And during the period this agreement shall be in force said trustees shall possess the legal title to such shares deposited and be entitled to exercise all rights of every name and nature, including the right to vote in person or by proxy in respect of any and all such shares; it being, however, understood that the holders of the trust certificates to be issued by the trustees shall be entitled to receive payments equal to the dividends, if any, collected by said trustees upon shares of said stock standing in their names.

Second: The trustees do hereby promise and agree with the stockholders and with every holder of certificates issued as hereinafter provided, that from time to time upon request they will cause to be issued to the several stockholders in respect of all stock deposited by them, certificates to an aggregate amount equal to the amount of all stock so deposited, and which certificates shall be in substantially the following form:

JONES LUMBER & SUPPLY COMPANY.

No. shares.

This certifies that has deposited shares of the capital stock of the above named JONES LUMBER & SUPPLY COMPANY, of the par value of One Hundred Dollars (\$100) each, with the Trustees hereinafter named, under an agreement between J. H. Jones, A. A. Brown, H. L. Smith, R. H. Smith, and William Abbott, Trustees, and certain stockholders of said Company, bearing date the day of, 192.... This certificate and the interest represented thereby is transferable only on the books of said Trustees upon the presentation and surrender hereof. The holder of this certificate takes the same subject to all the terms and conditions of the aforesaid agreement between the Trustees and certain stockholders of said Company, and becomes a party to said agreement, and is entitled to the benefits thereof.

In Witness Whereof, the Trustees have caused this certificate to be signed this day of, 192....

.....

 Trustees.

Third: From time to time after this agreement shall have taken effect the trustees may receive any additional full paid shares of the capital stock of the said Jones Lumber & Supply Company, upon the terms and the conditions of this agreement, and in respect of all such shares so received

will issue and deliver certificates similar to those above mentioned, entitling the holder to all the rights above specified.

Fourth: All dividends that may accrue upon the stock so deposited shall be distributed pro rata among the holders of said certificates of interest in the proportion in which they shall severally be entitled thereto.

Fifth: During the period from the date hereof to and including the day of, 1932, stockholders agree with each other and with the trustees, and the trustees accept the trust upon the condition of this agreement, that they will not sell their respective shares, although they will be at liberty to deal with trustees' certificates in the way of sale or otherwise as to them shall seem meet.

Sixth: During said period the trustees shall have the exclusive power to sell said shares; provided that no sale shall be made by said trustees save of all the deposited shares in lump. No sale shall be made at less price than at the rate of \$. for each and every share so deposited.

Seventh: In case of a sale at any time during the period aforesaid, the proceeds of same shall be distributed by the trustees to and among the holders of trustees' certificates upon the surrender thereof. The distribution shall be pro rata among the shares and there shall be no discrimination among the holders in the distribution. Any shares held or controlled by trustees shall share pro rata with all shares deposited.

Eighth: In case of a failure to sell said shares during said period the shares themselves shall be delivered by the trustees to the holders of trustees' certificates, in the proportion of their respective holdings, upon the surrender of said certificates to the trustees, and this agreement shall be at an end.

Ninth: Nothing herein contained shall deprive the trustees as individuals of the privilege to be enjoyed by all other depositors of selling or otherwise disposing of said certificates at their pleasure, or of purchasing additional certificates, or of purchasing additional stock and selling the same, or of joining in a syndicate to purchase under the power of sale hereby given, at not less than the price herein named.

Tenth: The trustees shall not be entitled to any compensation for their services as such trustees, but in case of a sale at not less than the price specified, the expenses and disbursement incurred by the trustees as such may be deducted from the proceeds to be distributed.

Eleventh: Any trustee may at any time resign by delivering to the other trustees in writing his resignation to take effect ten days thereafter, and in every case of the death, resignation or vacancy arising through other cause, the vacancy so occurring shall be filled by the appointment of the successor or successors to be made by the other trustees, and the term "trustees" as herein used shall apply to the parties of the second part and their successors thereunder.

Twelfth: All questions arising between the trustees shall from time to time be determined by a decision of the greater number of those then acting as trustees either at a meeting or by writing, with or without meeting, and in like manner they may establish their rules of action; the

decision or act of a majority of the trustees shall for the exercise of the voting power and for all purposes of this agreement, be deemed the decision or act of all the trustees.

Thirteenth: In voting the stock held by them the trustees will exercise their best judgment from time to time to select suitable directors to the end that the affairs of the company shall be properly managed and in voting on other matters which may come before them at any stockholders' meeting, will exercise like judgment; but it is understood that no trustee incurs any responsibility by reason of any error of law or of any matter or thing done or omitted under this agreement, except for his own individual malfeasance.

In Witness Whereof, The several parties hereto have hereunto set their hands and seals, and the trustees have hereunto set their hands and seals in token for their acceptance of the trust hereby created.

Name	Stockholder's Residence	Number of Shares
.....
.....
.....
Trustees:		
.....
.....
.....

CHAPTER XXXVIII.

THE BOARD OF DIRECTORS.

- § 661. Directors—In General.
- § 662. Qualification of Directors.
- § 663. Number of Directors.
- § 664. Tenure of Office.
- § 665. De Facto Directors.
- § 666. Removal of Directors.
- § 667. Call by Stockholders of Meeting to Consider Removal of Directors.
- § 668. Notice of Stockholders' Meeting to Consider Removal of Directors.
- § 669. Resolution Removing Individual Directors.
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- § 673. Resignation of Director Taking Effect on Date Named.
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- § 675. Vacancies.
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- § 681. Organization of Board of Directors.
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- § 691. Regular Meetings Falling Upon Holidays.
- § 692. Quorum at the Meetings of the Board of Directors.
- § 693. Place of Meeting of Board of Directors.
- § 694. Powers of the Board of Directors.
- § 695. Interlocking Directorates.

§ 661. **Directors—In General.**—The board of directors or trustees is the body usually entrusted with the authority to conduct the business of the corporation, and it may be said, that the directors

have plenary authority to transact all the ordinary business of the corporation within the scope of its charter powers unless their authority is restricted, and what they do within the scope and purposes of the corporation the corporation does.¹ A director is an officer and his duties make the position one of the highest trust and authority in connection with the affairs of the corporation.² Directors, however, are to be distinguished from the general officers such as president, secretary, and treasurer.³

§ 662. Qualification of Directors.—In most states, directors of corporations for profit must be holders of stock therein to an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Even where the by-laws are silent on the subject of the amount of stock which a stockholder must own, he must, nevertheless, be a stockholder to some extent. In some states it is provided that a majority of the directors must be, in all cases, residents of the state.⁴

As a general rule, where the statutes, charter, or by-laws, governing the corporation provide that directors shall be stockholders, it is essential to render a person eligible to the office of director that he be owner of stock in fact. While the courts are not disposed to construe such a requirement so strictly as to inhibit the transfer of stock for the express and avowed purpose of qualifying the transferee for election to the office of director or trustee,⁵ yet the rule is limited to a transfer in good faith and does not apply to render eligible one to whom stock is transferred solely for the purpose of qualifying him, the stock being immediately assigned back to the true

¹ *Hendren v. Neeper*, 279 Mo. 125, 213 S. W. 839, 5 A. L. R. 927; *Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559, A. C. 1918E 247.

² *Lynip v. Alturas School District*, 29 Cal. App. 158, 155 Pac. 109; *In re Harper*, 133 Fed. 970; *Eastham v. York State Tel. Co.* 86 N. Y. App. Div. 562, 83 N. Y. Supp. 1019.

³ *Laughlin v. Geer*, 121 Ill. App. 534.

⁴ California Civil Code, sec. 305; Idaho Comp. Stats. 1919 sec. 4711 (at least one director must be a citizen and actual bona fide resident); Montana Rev. Codes 1921, sec. 5933 (slightly different provision).

⁵ *People v. Lihme*, 269 Ill. 351, 109 N. E. 1051, A. C. 1916E 959; *Parkside Cemetery Ass'n v. Cleveland, Bedford, etc., Traction Co.*, 93 Ohio 161, 112 N. E. 596, A. C. 1918C 1051. See, also, *Webster v. Bartlett Estate Co.*, 35 Cal. App. 283, 169 Pac. 702; *Johnson v. York Coal & Coke Co.*, 182 Ky. 303, 206 S. W. 611.

owner in blank, though his name remain on the corporate books.⁶ However, under such provisions it has been held that beneficial ownership is not necessary, and that a person who holds the legal title to the stock on the books of the corporation is qualified.⁷ For instance, a director may hold his stock as trustee⁸ or executor⁹ and yet be legally qualified. Also, a person to whom shares of stock have been transferred for the avowed purpose of qualifying him as a director is eligible,¹⁰ provided title was not put in him to qualify him as director in furtherance of some dishonest or fraudulent scheme touching the management of the corporation.¹¹ If a person at the time of his election is not a stockholder he may not subsequently qualify by acquiring stock.¹² There is authority, however, to the contrary.¹³

§ 663. Number of Directors.—In nearly all states a minimum number of directors, and in some states a maximum number, is prescribed by law. In New York and California, the minimum for corporations in general is three, there being no maximum. The number, in excess of three, is entirely dependent on the will of the majority of the stockholders. They have full power to increase the number.¹⁴

⁶ *Webster v. Bartlett Estate Co.*, 35 Cal. App. 283, 169 Pac. 702 (quoting from 7 R. C. L. 413). See, also, *Chemical Nat. Bank of New York v. Colwell*, 132 N. Y. 250, 30 N. E. 644.

⁷ *Casper v. Kalt-Zimmers Mfg. Co.*, 159 Wis. 517, 528, 149 N. W. 754, 150 N. W. 1101; *People v. Lihme*, 269 Ill. 351, 109 N. E. 1051, A. C. 1916E 959.

⁸ *Kardo Co. v. Adams*, 231 Fed. 950, 146 C. C. A. 146; *Haines v. Kinderhook & H. R. Co.*, 33 App. Div. 154, 53 N. Y. Supp. 368.

⁹ *People v. Lihme*, 269 Ill. 351, 109 N. E. 1051, A. C. 1916E 959; *Schmidt v. Mitchell*, 101 Ky. 570, 41 S. W. 929, 72 A. S. R. 427.

¹⁰ *In re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347, 26 A. S. R. 639, 12 L. R. A. 781; *State v. Leete*, 16 Nev. 242; *In re St. Lawrence Steamship Co.*, 44 N. J. Law 529.

¹¹ *Johnson v. York Coal & Coke Co.*, 182 Ky. 303, 307, 312, 206 S. W. 611.

¹² *Waterbury v. Temescal Water Co.*, 11 Cal. App. 632, 105 Pac. 940; *Rozecrans Gold Min. Co. v. Morey*, 111 Cal. 114, 43 Pac. 585; *In re Newcomb*, 18 N. Y. Supp. 16, 42 N. Y. State 442; *Commonwealth v. Stevenson*, 200 Pa. 509, 50 Atl. 91.

¹³ *Greenough v. Alabama Great Southern Ry. Co.*, 64 Fed. 22; *Lippman v. Kehoe Stenograph Co.*, 11 Del. Ch. 412, 102 Atl. 988.

¹⁴ *Chandler v. Hart*, 161 Cal. 405, 119 Pac. 516, A. C. 1913B 1094.

§ 664. **Tenure of Office.**—Under statutes of many states directors of corporations hold office for but one year, and it is usually required that they be elected annually by the stockholders.¹⁵ Where the statute so requires an election of directors must be held substantially once in each year.¹⁶ As a matter of law, however, directors once elected continue in office until they resign or until their successors have been elected and qualified.¹⁷ Where the term of office of a director is fixed by statute, it cannot be changed by the directors.¹⁸ Nor have the stockholders power to shorten it by any method except by removal for cause.¹⁹

Social, religious, or benevolent corporations are usually permitted to provide in their by-laws any terms they may desire during which the entire board or a portion of it may serve. Accordingly many such organizations adopt what is called the rotary system, a certain proportion of the members of the board retiring each year. For instance, the board so classifies its members that one-fifth will go out of office each year, each director serving for five years.

§ 665. **De Facto Directors.**—Persons who hold office as directors with the consent of the corporation, and under color of election are *de facto* officers, although their election may have been illegal²⁰ and they may be removed by proper proceedings.¹ In

¹⁵ Humboldt Sav., etc., Soc. v. Wennerhold, 81 Cal. 528, 22 Pac. 920; Kinard v. Ward, 21 Cal. App. 92, 130 Pac. 1194; California Civil Code, sections 302, 303, subd. 4; Toledo Traction, Light & P. Co. v. Smith, 205 Fed. 643; Walsh v. State, 199 Ala. 123, 74 So. 45, 2 A. L. R. 551; State v. McCullough, 3 Nev. 202; Appleton v. American Malting Co., 65 N. J. Eq. 375, 54 Atl. 454.

¹⁶ State v. McCullough, 3 Nev. 202.

¹⁷ Kinard v. Ward, 21 Cal. App. 92, 130 Pac. 1194; Grant v. Elder, 64 Colo. 104, 170 Pac. 198; New York, B. & E. R. Co. v. Motil, 81 Conn. 466, 71 Atl. 563; Quitman Oil Co. v. Peacock, 14 Ga. App. 550, 81 S. E. 908; Western Cottage Piano, etc., Co. v. Burrows, 144 Ill. App. 350; Appleton v. American Malting Co., 65 N. J. Eq. 375, 54 Atl. 454; Jenkins v. Baxter, 160 Pa. 199, 28 Atl. 682.

¹⁸ Nathan v. Tompkins, 82 Ala. 437, 2 So. 747.

¹⁹ Toledo Traction, Light & P. Co. v. Smith, 205 Fed. 643.

²⁰ Chandler v. Hart, 161 Cal. 405, 119 Pac. 516, A. C. 1913B 1094; Carpenter v. Clark, 217 Mich. 63, 185 N. W. 868.

¹ Waterman v. Chicago & I. R. Co., 139 Ill. 658, 29 N. E. 689, 32 A. S. R. 228, 15 L. R. A. 418.

the absence of judicial steps to remove or restrain them, their acts as directors are as valid as if they were duly elected,² in so far as third persons are concerned.³ Thus, a call for an assessment on a stock subscription, by a *de facto* board of directors, is binding and the validity of the directors' election cannot be questioned in an action to enforce the assessment.⁴ Likewise, a *de facto* board may call a meeting of directors, and a *de facto* officer may issue a certificate of stock without invalidating it or impairing the right of the stockholder to vote it.⁵ Also, the removal of an administrative officer of the corporation by a *de facto* board of directors, has been upheld.⁶ While it has been held that a board of directors who are merely *de facto* officers can, under general power of directors to fill vacancies, elect a person to fill a vacancy in the board so as to render the person so elected a director *de jure*,⁷ it would seem that the contrary view is the better one.⁸ *De facto* directors cannot delegate powers which they themselves do not possess.⁹ A *de facto* director is liable for all acts and omissions on his part in the same manner and to the same extent as a *de jure* director.¹⁰

§ 666. Removal of Directors.—Some states provide a statutory method for the removal of directors. Thus in some states, the "board of directors" may be removed from office by a vote of two-thirds of the members, or of stockholders holding two-thirds

² Merchants' Nat. Bank of Gardener v. Citizens' Gas Light Co., 159 Mass. 505, 34 N. E. 1083, 38 A. S. R. 453; Cooke v. Marshall, 191 Pa. 315, 43 Atl. 314, 64 L. R. A. 413; Guaranty Loan Co. v. Fontanel, 183 Cal. 1, 190 Pac. 177.

³ Mahoney Min. Co. v. Anglo-Californian Bank, 104 U. S. 192, 26 L. Ed. 707; Copper Belle Min. Co. v. Costello, 12 Ariz. 318, 100 Pac. 807; Robinson v. Blood, 151 Cal. 504, 91 Pac. 258; Davis v. Edwards, 41 Wash. 480, 84 Pac. 22.

⁴ Ohio & M. R. Co. v. McPherson, 35 Mo. 13, 86 A. D. 128.

⁵ Sherwood v. Wallin, 154 Cal. 735, 99 Pac. 191.

⁶ State v. Kupferle, 44 Mo. 154, 100 A. D. 265.

⁷ State v. Kupferle, 44 Mo. 154, 100 A. D. 265.

⁸ In re Ringler & Co., 204 N. Y. 30, 97 N. E. 593, A. C. 1913C 1036.

⁹ Stratton Massachusetts Gold Min. Co. v. Davis, 222 Mass. 549, 111 N. E. 375.

¹⁰ Kinard v. Ward, 21 Cal. App. 92, 130 Pac. 1194; Mutual Life Ins. Co. v. McCurdy, 118 App. Div. 815, 103 N. Y. Supp. 829.

of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal.¹¹

Where the statute provides for the removal of the whole board, it denies the power to remove less than the whole number. The reason for this is that by the system of cumulative voting, a minority may obtain representation in the board; if so, a director elected to represent a minority of one-third ought not to be removed by the subsequent vote of the other two-thirds, and the system of cumulative voting and minority representation thus made ineffective.

In the absence of a controlling statute there is no inherent power in the stockholders to remove directors before the expiration of their term if the term of office is fixed, except for cause.¹²

Meetings of stockholders for the purpose of removing the board of directors may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting and by whose order it is called. If the secretary refuse to give the notice, or if there be none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner required for adoption of by-laws unless other express provision has been made therefor in the by-laws. In case the board of directors is so removed, a new board may be elected at the same meeting.

¹¹ California Civil Code, sec. 310. See, also, Idaho Comp. Stats. 1919, sec. 4716; Montana Rev. Codes 1921, sec. 5940, where it is provided that "No director shall be removed from office," etc.

¹² *Archer v. People's Sav. Bank*, 88 Ala. 249, 7 So. 53; *Ohio & M. Ry. Co. v. State*, 49 Ohio St. 668, 32 N. E. 933; *People v. Powell*, 201 N. Y. 194, 94 N. E. 634; *Toledo Traction, Light & P. Co. v. Smith*, 205 Fed. 643; *Wolf v. Gegenseitige, etc., Germania*, 149 Wis. 576, 136 N. W. 175.

§ 667. Call by Stockholders of Meeting to Consider Removal of Directors.

To the Secretary of the New Era Printing Company:

The undersigned, stockholders holding more than one-half of the votes entitled to be cast for the removal of the board of directors, hereby call a meeting of the stockholders of the New Era Printing Company, a corporation, to be held at the offices of the company, No. 50 Broadway, Oakland, California, on the 22nd day of March, 1926, at the hour of 2 o'clock p. m., for the purpose of considering a resolution which we intend then to propose removing from office the present board of directors.

Stockholders.	Votes.
E. P. Jones.....	500
M. L. Bennett.....	200
Asa Roberts	300
James Willard	400
Robt. Ainslie	100

Dated March 1, 1926.

§ 668. Notice of Stockholders' Meeting to Consider Removal of Directors.

Notice is hereby given that, pursuant to a call therefor by stockholders holding more than one-half of the votes of the stockholders, a special meeting of the stockholders of the New Era Printing Company, a corporation, will be held at the offices of the company, No. 50 Broadway, Oakland, California, on the 22nd day of March, 1926, at the hour of 2 o'clock p. m., for the purpose of considering a resolution, then to be proposed, removing from office the present board of directors.

JAMES WILLARD, Secretary.

Dated March 3, 1926.

§ 669. Resolution Removing Individual Directors.—Statutes are, however, found in some of the states providing for the removal of individual directors. Such removal can be accomplished only by the vote of a certain proportion of the stockholders, usually two-thirds, at a meeting of which a notice must be given specifying such to be the purpose, or one of the purposes. The statutes seem to leave the question, of course, entirely to the discretion of the stockholders. It is thought, however, that the courts would protect by injunction an arbitrary removal without cause, especially if its purpose were to install agents and tools of the majority for the purpose of perpetrating a fraud upon a protesting minority. The resolution of removal may read as follows:

Whereas, John Doe, one of the directors of this corporation, has been, on various occasions, derelict in his duties as such director, and has used his position for the promotion of his own personal gain, at the expense of the interests of said corporation and its stockholders; now, therefore,

Be It Resolved, By the stockholders, two-thirds voting therefor, that the said John Doe be, and he is hereby, removed from the office of director, and the remaining members of the board of directors are authorized and requested to fill the vacancy caused by his removal, pursuant to the provisions of the statutes and by-laws in such case made and provided.

§ 670. Resignations of Directors.—A director may resign as such at any time without the consent of the corporation.¹³ The fact that a statute requires directors, unless removed, to continue in office until their successors are appointed, does not prevent a director from resigning at any time.¹⁴ Nor is the validity of a resignation dependent upon the appointment of a successor in office,¹⁵ except in some jurisdictions.¹⁶

It is important, therefore, if a director wish to escape responsibility for some action about to be taken that he make his resignation preemptory and unconditional. He should say, "I hereby resign," rather than "I hereby tender my resignation and ask that it be accepted." In the former case, it takes effect immediately.¹⁷ In the latter, it takes effect only upon the acceptance by the board.¹⁸ No particular form of resignation is necessary. It may be either oral or written,¹⁹ although it is advisable to make it

Zeltner v. Henry Zeltner Brewing Co., 174 N. Y. 247, 66 N. E. 810, 95 A. S. R. 574; *Zimmerman v. Western & So. Fire Ins. Co.*, 121 Ark. 408, 181 S. W. 283, A. C. 1917D 513.

¹³ *Briggs v. Spaulding*, 141 U. S. 132, 11 S. C. R. 924, 35 L. Ed. 662; *Fearing v. Glenn*, 73 Fed. 116, 19 C. C. A. 388.

¹⁴ *Fearing v. Glenn*, 73 Fed. 116, 19 C. C. A. 388; *In re McNaughton*, 138 Wis. 179, 118 N. W. 997, 120 N. W. 288.

¹⁵ *Timolat v. S. J. Held Co.*, 17 Misc. Rep. 556, 40 N. Y. Supp. 692.

¹⁷ *Zeltner v. Henry Zeltner Brewing Co.*, 174 N. Y. 247, 66 N. E. 810, 95 A. S. R. 574.

¹⁸ *Durant Land Imp. Co. v. Thompson-Houston Elec. Co.*, 23 Civ. Pro. (N. Y.) 29, 2 Misc. Rep. 182; *Seal of Gold Min. Co. v. Slater*, 161 Cal. 621, 120 Pac. 15; *Lincoln Court Realty Co. v. Kentucky Title Sav. Bank, etc.*, Co., 169 Ky. 840, 185 S. W. 156.

¹⁹ *Fearing v. Glenn*, 73 Fed. 116, 19 C. C. A. 388.

in writing so to avoid all dispute.²⁰ The rights, duties, and liabilities of a director generally terminate with his resignation.¹

§ 671. Resignation of Director Without Giving Reason.

To the Board of Directors of the New Era Printing Company:

I hereby tender my resignation as a member of the board, to take effect immediately.

Washington, D. C., May 1, 1926.

Respectfully,

E. P. JONES.

§ 672. Resignation of Director Giving Reason.

To the Board of Directors of the New Era Printing Company:

Gentlemen—Having been temporarily elected a member of the board pending the selecting of a suitable person to permanently fill the place made vacant by the resignation of E. P. Jones, I hereby tender my resignation as a member of your body, to take effect upon your acceptance of the same.

Respectfully,

Dated Oct. 1, 1926.

JOHN GORDON.

§ 673. Resignation of Director Taking Effect on Date Named.

To the Board of Directors of the New Era Printing Company:

Gentlemen—I hereby tender my resignation from the board of directors of said corporation as a member thereof, to take effect at the close of the next regular meeting, to be held on the 15th day of May, 1926.

This April 30, 1926.

E. P. JONES.

§ 674. Resignation of Director Requesting Speedy Acceptance.

To the Board of Directors of the New Era Printing Company:

Gentlemen—I hereby tender my resignation as president of your company and as a member of the board of directors, and ask its consideration and acceptance at the next meeting of the board.

Respectfully,

Washington, D. C., May 1, 1926.

M. L. BENNETT.

§ 675. **Vacancies.**—In the absence of an express grant directors have no valid power to fill vacancies in their own board.² It is usually provided by statute, however, whenever a vacancy

²⁰ Briggs v. Spaulding, 141 U. S. 132, 11 S. C. R. 924, 35 L. Ed. 662.

¹ Sorrentino v. Giletti, 75 App. Div. 507, 78 N. Y. Supp. 322.

² Moses v. Thompsons, 84 Ala. 613, 4 So. 763; Kearney v. Andrews, 10 N. J. Eq. 70; Seal of Gold Min. Co. v. Slater, 161 Cal. 621, 120 Pac. 15.

occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.³

Under a statute providing that any vacancy among the directors caused by death, resignation, removal or otherwise shall be filled in such manner as may be provided by the by-laws, and in the absence of such provision, shall be filled by the board of directors, it seems that the board is not authorized to appoint persons to fill positions of directors where the number of directors is increased.⁴

Failure to fill any vacancy which may occur in the board does not prevent the remaining directors, if they constitute a quorum, from holding lawful meetings and transacting the business of the corporation.⁵

§ 676. Resolution Filling Vacancy on Board.—A resolution of the board appointing a successor to a retiring director may be in the following form:

Whereas, Enos Hopkins is disqualified as a director of this corporation by reason of his ceasing to be a holder of the shares of its capital stock (or ceasing to be a member), be it resolved, that the office of the said Enos Hopkins as such director, be, and the same is, hereby declared to be vacant, and William Benson, a holder of forty shares of the capital stock (or a member) of this corporation, is hereby appointed a director to fill the vacancy caused by the disqualification of said Hopkins and the vacancy hereby declared.

If the vacancy has resulted from any other cause, such as a resignation, or a judicial removal, the form of the resolution may be changed accordingly.

§ 677. Increasing and Decreasing Membership of the Board.—In some states it is provided that any corporation or association may increase or diminish the number of its directors or trustees

³ California Civil Code, sec. 305; Idaho Comp. Stats. 1919, sec. 4711; Montana Rev. Codes, 1921, sec. 5933.

⁴ Gold Bluff Min. & Lumber Corp. v. Whitlock, 75 Conn. 669, 55 Atl. 175; In re Griffing Iron Co., 63 N. J. Law 168, 41 Atl. 931, 63 N. J. Law 357, 46 Atl. 1097, 57 L. R. A. 624.

⁵ Porter v. Lassen County Land & Cattle Co., 127 Cal. 261, 59 Pac. 563; Schnittger v. Old Home Consol. Min. Co., 144 Cal. 603, 78 Pac. 9; Dodge v. Kenwood Ice Co., 204 Fed. 577, 123 C. C. A. 103.

by the vote or written assent of stockholders representing a majority of its subscribed capital stock, or, if it has no capital stock, by the vote or written assent of a majority of the members. A certificate over the corporate seal, setting forth the action taken by the stockholders, or members, and stating the new number of the directors, must be signed by the president and secretary of such corporation or association, and filed in the office of the secretary of state, whereupon the number of directors or trustees will be changed as stated in said certificate. The secretary of state must forthwith issue a certified copy of said certificate and transmit said copy to the county clerk of the county in which the principal place of business of the corporation was situated at the time the said corporation was incorporated, which copy must be filed by said county clerk upon payment of the fee prescribed by law. It is also sometimes provided that a copy of such certificate, certified by the secretary of state, must be filed by such corporation in the office of the county clerk of every county in which said corporation has or holds real property. .

§ 678. Resolution of Stockholders Increasing Number of Directors.

Be It Resolved, That the number of directors of this corporation, the New Era Printing Company, be and the same is hereby increased from the original number of seven to nine; that the present board of directors be and they are hereby authorized and directed to appoint or elect two additional members of said board, in accordance with this resolution, to serve until the next annual election, and to take all such steps as shall be necessary to give legal effect to this resolution, in conformity with the requirements of the statutes governing the subject.

§ 678a. Consent of Stockholders to Change of Number of Directors.

State of, County of, ss.

Know All Men by These Presents:

That we, the undersigned, owners and holders of more than a majority of the issued capital stock of the Company, a corporation, organized and existing under the laws of, and having its principal place of business at, in the county of, state of, to wit: The owners and holders of shares of the capital stock of the corporation do hereby consent in writing, and author-

ized, in power and direct the board of directors and officers of this corporation to change the number of directors from to

Dated this day of April, 1927.

....., owning and holding shares

....., owning and holding shares

....., owning and holding shares

§ 679. Certificate for Increasing or Decreasing the Number of Directors.

Know All Men by These Presents:

That we, and are, and at all times, herein mentioned were, the duly elected, qualified and acting president and secretary, respectively, of the Company, a corporation, organized and existing under the laws of the state of, and we do hereby certify:

That a special meeting of the shareholders of said corporation was held at its office at, in the city of, in said county, at 10 o'clock a. m., on the 15th day of April, 1927; that the total number of subscribed and issued shares of capital stock of said corporation is shares; that stockholders holding and representing shares of said corporation were then and there present at said meeting; that at said meeting a resolution (to increase or diminish) the number of directors of said corporation from to was regularly proposed, voted upon and adopted by the unanimous vote of stockholders representing shares of the subscribed capital stock of said corporation, being more than a majority of the subscribed capital stock of said corporation; and that the following is a true and full copy of said resolution, to wit:

"Resolved, That the number of directors of Company, be and is hereby (increase and decrease as the case may be) from to"

That the new number of directors of said Company is

In Witness Whereof, We have hereunto set our hands and affixed hereunto the corporate seal of said corporation, this 20th day of April, 1927.

(Seal.)

.....
President.

.....
Secretary.

State of, County of, ss.

On this 20th day of April, 1927, before me,, a notary public in and for the said county of, state of, residing therein, duly commissioned and sworn, personally appeared known to me to be the president, and, known to me to be the secretary, of the Company, the corporation described in the

within instrument and they severally acknowledged that they executed such instrument as president and secretary respectively of said company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the county of, the day and year in this certificate first above written.

.....
Notary Public in and for the County of,
State of

§ 680. Certificate of Increase of Number of Directors by Amending Articles.—In states which permit an increase in the number of directors by an amendment of the original articles of incorporation, the following certificate may be used:

Certificate as to Increase of Directors
of the

NEW ERA PRINTING COMPANY.

We, the undersigned, James Willard, president, and J. F. Weston, secretary of the New Era Printing Company, a corporation, do hereby certify that on the 25th day of January, 1926, at three o'clock p. m., a meeting of the stockholders of said corporation was duly held at the office and principal place of business of said corporation in the city of, state of, pursuant to due and regular notice to each of said stockholders.

That at said meeting all of the capital stock of said corporation was represented by stockholders in person owning same.

That said stockholders' meeting was called for the purpose of voting upon the question of increasing the number of the members of the board of directors of said corporation.

That at said meeting the following resolutions were passed by unanimous vote of the stockholders of said corporation:

"Resolved, That the number of the directors constituting the board of directors of this company be and the same is hereby increased from five (5) directors to seven (7) directors.

"Resolved, That the president and secretary of this company be and they are hereby authorized to execute and file with the secretary of state, and with the clerk of the county of, the proper certificates showing the increase in the number of the board of directors of this company."

That said proceedings were had and taken under Section of the Civil Code (or under an act entitled, etc.) of the state of

That thereby the number of directors constituting the board of directors of said corporation was increased from five (5) directors to seven (7) directors.

That said New Era Printing Company, a corporation, was duly incorporated on the 15th day of December, 1925, by filing its articles of incorpora-

tion with the county clerk of the county of, state of, and on that day, and thereafter, filing a certified copy thereof with the secretary of state of the state of

That under said articles of incorporation the office and principal place of business of said corporation is in the city of and county of, state of

In Witness Whereof, We have hereto set our hands as president and secretary of said New Era Printing Company, and hereto affixed the corporate seal of said company this 1st day of May, 1926.

JAMES WILLARD,
President.

J. F. WESTON,
Secretary.

(Corporate Seal.)

§ 681. Organization of Board of Directors.—In many states, immediately after their election the directors must organize by the election of a president, who must be one of their number, one or more vice presidents, a secretary, and treasurer.⁶ Unless the contrary is shown, it will be presumed that the organization of the board of directors took place at the time provided by law, that is, immediately after election by the stockholders.⁷ It is usually held that a provision in the articles of incorporation providing that a new board of directors shall organize within a time specified after their election, is merely directory.⁸

While the president must be a member of the board, neither the secretary nor the treasurer need be a director, or even a stockholder. In fact, it is very frequently found desirable to select a banking company as a treasurer. After the election of directors, if they be present at the meeting at which they are elected, an organization of the board may be effected at once.

§ 682. Meetings of the Board of Directors.—In some states it is provided by statute that when no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two direc-

⁶ California Civil Code, sec. 308; Idaho Comp. Stats. 1919, sec. 4714; Montana Rev. Codes, 1921, sec. 5938.

⁷ Waterbury v. Temescal Water Co., 11 Cal. App. 632, 105 Pac. 940.

⁸ Jones v. Bonanza Min., etc., Co., 32 Utah 440, 91 Pac. 273.

tors.⁹ Where such mode of calling special meetings is made either by statute or by-laws, a meeting called otherwise than in compliance therewith is illegal, and the action of the directors at such meeting is void.¹⁰ However, where the by-laws of a corporation provide that in case of the absence of the president, or his inability to act, the vice-president shall take his place and perform his duties, the vice-president may under such circumstances call a special meeting which the president might call if present.¹¹

§ 683. Notice of Meetings.—Statutes of many states usually provide that the by-laws of the corporation may provide the time, place, and manner of calling and conducting meetings and may dispense with notice of all regular meetings.¹² Where the time for regular meetings is prescribed in the by-laws, there is no necessity of notifying directors of such time.¹³ But if the by-laws do not make provisions for regular meetings, notice must be given.¹⁴ Of course it is essential that notices of special meetings be given.¹⁵ Where the mode or manner of giving notice is provided for in the by-laws or statutes, such must be strictly observed.¹⁶ In the absence of any statute or by-law fixing the length of time that notice

⁹ California Civil Code, sec. 320; Idaho Comp. Stats. 1919, sec. 4726; Montana Rev. Codes, 1921, sec. 5944.

¹⁰ Smith v. Dorn, 96 Cal. 73, 30 Pac. 1024; Hill v. Rich Hill Coal Min. Co., 119 Mo. 9, 24 S. W. 223.

¹¹ Bell v. Standard Quicksilver Co., 146 Cal. 699, 81 Pac. 17. The power given to two of the directors to call special meetings is independent of that vested in the president, or the person who may be acting as such in his absence.

¹² California Civil Code, sec. 303, subd. 1. See, also, Idaho Comp. Stats. 1919, sec. 4709; Montana Rev. Codes 1921, sec. 5931.

¹³ Seal Gold Min. Co. v. Slater, 161 Cal. 621, 120 Pac. 15; Gumaer v. Cripple Creek Tunnel, Transp. & Min. Co., 40 Colo. 1, 90 Pac. 81, 122 A. S. R. 1024, 13 A. C. 781; Whitehead v. Hamilton Rubber Co., 52 N. J. Eq. 78, 82, 27 Atl. 897; Republican Mountain Silver Mines v. Brown, 58 Fed. 644, 7 C. C. A. 412, 24 L. R. A. 776.

¹⁴ De Moulín v. Magnesite Refractories Co., 186 Cal. 128, 199 Pac. 42; Lowe v. Los Angeles Suburban Gas Co., 24 Cal. App. 367, 141 Pac. 399.

¹⁵ Clark Realty Co. v. Douglas, 46 Nev. 378, 212 Pac. 466; Huntington Roller Mills & Mfg. Co. v. Miller, 60 Utah 236, 208 Pac. 531.

¹⁶ Beatty v. Rianda, 34 Cal. App. 180, 167 Pac. 185.

must be given before a special meeting of directors, twenty-four hours will be sufficient.¹⁷

§ 684. Mandamus to Compel Meeting of Directors.—It has been held that mandamus will lie to compel the president of a corporation to call a special meeting of the board of directors, there being a valid by-law requiring the issuance of the call, and where the necessary demand therefor has been made.¹⁸ The writ will also lie to compel the board of directors to call an annual meeting to elect directors, as required by the by-laws.¹⁹

The court, however, will not interfere with the internal management of a corporation, or a discretion vested in the directors or shareholders with respect to the calling of meetings. Consequently, where, by the articles of association of a company, the directors or shareholders can summon a meeting, the court will not order the directors to summon a meeting for the general purposes of the company.²⁰

§ 685. Call by President of Special Meeting of Directors.

Office of New Era Printing Company.

To J. F. Weston, Secretary:

Pursuant to authority vested in me, I hereby call a special meeting of the board of directors, to be held at the office of said corporation, No. 50 Printing House Square, Washington, D. C., on the 15th day of May, 1926, at 10 o'clock a. m., for the purpose of considering and acting upon a proposition to move the plant of said company to a new site and to transact all such business as properly pertains to and is connected with such removal; and I hereby authorize and direct you to send out notices of said meeting to the directors of said corporation, in accordance with the requirements of the by-laws.

JAMES WILLARD,
President.

Dated May 4, 1926.

¹⁷ Balfour-Guthrie Inv. Co. v. Woodworth, 124 Cal. 169, 56 Pac. 891.

¹⁸ Cummings v. State, 47 Okla. 627, 149 Pac. 864, L. R. A. 1915E 774.

¹⁹ Stabler v. El Dora Oil Co., 27 Cal. App. 516, 150 Pac. 643.

²⁰ Macdougall v. Gardiner L. R., 10 Ch. 606, 33 L. T. N. S. 521, 23 Week. Rep. 846. See, also, Knoll v. Levert, 136 La. 241, 66 So. 959.

§ 686. Notice of Regular Meeting of Directors.

Office of
NEW ERA PRINTING COMPANY,
50 Printing House Square,
Washington, D. C.

May 20, 1926.

To E. P. Jones, Director:

You will please take notice that the regular monthly meeting of the board of directors of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the city of Washington, D. C., on the 25th day of May, 1926, at 10 o'clock a. m.

Respectfully,

J. F. WESTON, Secretary.

§ 687. Notice of Special Meeting of Directors.

Office of
NEW ERA PRINTING COMPANY,
50 Printing House Square,
Washington, D. C.

May 20, 1926.

To E. P. Jones, Director:

You will please take notice that, pursuant to a call by the president, a special meeting of the board of directors of the New Era Printing Company will be held at the office of said corporation, No. 50 Printing House Square, in the city of Washington, D. C., on the 25th day of May, 1926, for the purpose of considering and acting upon a proposition to move the plant of said company to a new site and to transact all such other business as properly pertains to and is connected with such removal.

Respectfully,

J. F. WESTON, Secretary.

§ 688. Waiver of Notice.—When all the directors of a corporation are present at any directors' meetings, however called or noticed, and sign a written consent thereto, on the record of such meeting, or if the majority of the directors are present, and if those not present sign in writing a waiver of notice of such meeting, which waiver is presented and made a part of the records of such meeting, the transactions of such meeting are as valid as if had at a meeting regularly called and noticed.¹

¹ California Civil Code, sec. 320a; *Sferlazzo v. Oliphant*, 24 Cal. App. 81, 140 Pac. 289.

§ 689. Adjourned Meeting Without Notice.—An adjourned meeting held on a date named at a previous and properly called meeting may be held without additional notice.² It is essential, however, that the minutes show the specific time to which the meeting is adjourned.³ A special notice may be dispensed with where there is a custom to hold meetings at a certain time and place.⁴ A quorum must have been present at the meeting at which the adjournment was made. Otherwise, notice must be given anew.⁵

§ 690. Presumption of Due Notice.—Where the by-laws make it necessary to give notice only of special meetings, it will be assumed that a particular transaction occurred at a regular meeting; in the absence of proof that the meeting was a special one.⁶ Or that the meeting was regularly called and that due and sufficient notice thereof was given to each director.⁷ In fact, it is presumed in all cases that proper notice has been given, the burden of proof being upon him who denies the validity of actions taken at a meeting to establish want of proper notice.⁸

§ 691. Regular Meetings Falling Upon Holidays.—Where the regular meeting falls upon a holiday, and there is no provision in the by-laws covering such a case, the board must either meet on the day named or call a special meeting by giving proper notice. The board may not meet on the next day without notice, or after an adjournment to that day unless a quorum was present on the

² Whitcomb v. Giannini, 43 Cal. App. 229, 184 Pac. 887; Raisch v. M. K. & T. Oil Co., 7 Cal. App. 667, 95 Pac. 662; Western Imp. Co. v. Des Moines Nat. Bank, 103 Iowa 455, 72 N. W. 657.

³ Thompson v. Williams, 76 Cal. 153, 18 Pac. 153, 9 A. S. R. 187. (Where the day but not the hour was fixed.)

⁴ American Exchange Nat. Bank v. First Nat. Bank, 82 Fed. 961, 27 C. C. A. 274.

⁵ Cheney v. Canfield, 158 Cal. 342, 351, 111 Pac. 92, 32 L. R. A. (N. S.) 16; Raisch v. M. K. & T. Oil Co., 7 Cal. App. 667, 95 Pac. 662.

⁶ Barrell v. Lake View Land Co., 122 Cal. 129, 54 Pac. 594.

⁷ Robinson v. Blood, 151 Cal. 504, 91 Pac. 258; Illinois Commercial Men's Assoc. v. Perrin, 139 Ill. App. 543; Wells v. Rodgers, 60 Mich. 525, 27 N. W. 671.

⁸ Singer v. Salt Lake City Copper Mfg. Co., 17 Utah 143, 53 Pac. 1024, 70 A. S. R. 773.

holiday. A law permitting acts provided by "law or contract" to be done upon the next day has no application to the corporate meetings, since a by-law is not a "law or contract" within the meaning of such a statute.⁹

The situation is different, however, where a controlling statute declares "whenever anything of a secular nature other than a work of necessity or charity is provided, or agreed to be done upon a day named, or within a time named, and the day or the last day thereof falls on a holiday, it may be performed on the next ensuing business day with like effect as though performed on the appointed day."¹⁰

§ 692. Quorum at the Meetings of the Board of Directors.—

A majority of the directors is ordinarily a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, when duly assembled, is valid as a corporate act.¹¹ When a sufficient number of directors are present to constitute a quorum the action of the majority of those present is generally binding upon the corporation,¹² provided such majority is made up of directors who are not disqualified to act by reason of their individual interest in the matter.¹³

In the case of vacancies in the board the remaining directors may lawfully represent the corporation, for there is no principle requiring vacancies on the board to be filled before the remaining directors can act in the business of the corporation, provided, of course, the number left is sufficient to constitute a quorum.¹⁴ The

⁹ *Cheney v. Canfield*, 158 Cal. 342, 32 L. R. A. (N. S.) 16, 111 Pac. 92.

¹⁰ *Saline Valley Salt Co. v. White*, 177 Cal. 341, 170 Pac. 820.

¹¹ *McLane v. Placerville & Sacramento Val. R. Co.*, 66 Cal. 606, 6 Pac. 748; *Chase v. Tuttle*, 55 Conn. 455, 12 Atl. 874, 3 A. S. R. 64; *Silsby v. Strong*, 38 Ore. 36, 62 Pac. 633.

¹² *Ten Eyck v. Pontiac O. & P. A. R. Co.*, 74 Mich. 226, 41 N. W. 905, 16 A. S. R. 633, 3 L. R. A. 378.

¹³ *In re McCarthy Portable Elevator Co.*, 201 Fed. 923, 120 C. C. A. 261; *Lowe v. Los Angeles Suburban Gas. Co.*, 24 Cal. App. 367, 141 Pac. 399; *De Moulin v. Magnesite Refractories Co.*, 186 Cal. 128, 199 Pac. 42; *Miner v. Belle Isle Ice Co.*, 93 Mich. 97, 53 N. W. 218, 17 L. R. A. 412.

¹⁴ *Chase v. Tuttle*, 55 Conn. 455, 12 Atl. 874, 3 A. S. R. 64; *Dodge v. Kenwood Ice Co.*, 204 Fed. 577, 123 C. C. A. 103.

rule requiring such number to constitute a quorum is subject to an exception for the purpose of filling vacancies in the board.¹⁵

§ 693. Place of Meeting of Board of Directors.—The statutes of many states require that the meetings of the board of directors of a corporation must be held at its principal place of business, or at an office within the state designated for such purpose in its by-laws.¹⁶ There is no inherent restriction upon the right of the directors to select the place for holding their meetings, and a by-law of a corporation requiring regular meetings of its directors to be held at its general office does not prevent special meetings from being held at any place that would otherwise be lawful.¹⁷ Where the corporation has no other regular place of business, the office of the president or secretary will be presumed to be a proper place.¹⁸

Where the directors of a corporation are restricted by its charter or the laws of the state from which it derives its existence, in holding meetings of a corporate character, to the limits of the state in which it is incorporated, the exercise of such power beyond the limits of such state is void.¹⁹ In the absence of provisions to the contrary a board of directors may meet and act outside of the limits of the state which created the corporation.²⁰ This is sometimes expressly authorized by statute.¹

§ 694. Powers of the Board of Directors.—The directors, when assembled as a board, are, next to the stockholders in meeting assembled, the agency of highest authority in the corporation,

¹⁵ *Brown v. Valley View Min. Co.*, 127 Cal. 630, 60 Pac. 424.

¹⁶ California Civil Code, sec. 319. See, also, Idaho Comp. Stats. 1919, sec. 4725; Montana Rev. Codes 1921, sec. 5943; *Seal of Gold Min. Co. v. Slater*, 161 Cal. 621, 120 Pac. 15; *Ashley Wire Co. v. Illinois Steel Co.*, 164 Ill. 149, 45 N. E. 410, 56 A. S. R. 187.

¹⁷ *Ashley Wire Co. v. Illinois Steel Co.*, 164 Ill. 149, 45 N. E. 410, 56 A. S. R. 187.

¹⁸ *Troy Min. Co. v. White*, 10 S. D. 475, 74 N. W. 236, 42 L. R. A. 549.

¹⁹ *Union Nat. Bank v. State Nat. Bank*, 155 Mo. 95, 55 S. W. 989, 78 A. S. R. 560.

²⁰ *Place v. People*, 192 Ill. 160, 61 N. E. 354.

¹ *Handley v. Stutz*, 139 U. S. 417, 11 S. C. R. 530, 35 L. Ed. 227; *Brockway v. Gadsden Mineral Land Co.*, 102 Ala. 620, 15 So. 431; *Wright v. Lee*, 2 S. D. 596, 51 N. W. 706.

but only when acting together as a board.² The powers vested in the directors can be exercised by them only in their collective capacity, or by such agents, real or ostensible, as they have accredited or by their conduct are deemed to have accredited.³ Under their expressly delegated authority, they may do whatever a liberal construction of the terms of the instrument conferring it allow, and in the honest and reasonable exercise of such power they are not subject to control by the stockholders.⁴

Corporate stockholders do not confer and cannot revoke the powers of the board of directors, which are derivative only in the sense of being received from the state in the act of incorporation.⁵ Directors are made by law the managing agents or governing body to control the business affairs of the corporation; and authority to perform acts within the managing power must come from them.⁶

When the directors are convened as a board they are primary, possessors of all the powers conferred by the charter, and may delegate to agents of their own appointment the performance of any acts which they themselves can perform.⁷ In some jurisdictions, however, they cannot delegate their own discretionary powers.⁸

§ 695. Interlocking Directorates.—The mere fact that the same persons are controlling directors in two separate corporations, forming what is commonly known as an “interlocking directorate,” does not prevent the two corporations from legally

² *Lemoore Canal & Irrigation Co. v. McKenna*, 163 Cal. 736, 127 Pac. 345; *Citizens Securities Co. v. Hammel*, 14 Cal. App. 564, 112 Pac. 731.

³ *Thomasson v. Grace Methodist Episcopal Church*, 113 Cal. 558, 45 Pac. 838; *Scott v. Superior Sunset Oil Co.*, 144 Cal. 140, 77 Pac. 817.

⁴ *Paducah & Illinois Ferry Co. v. Robertson*, 161 Ky. 485, 171 S. W. 171; *Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559, A. C. 1918E 247; *People v. Powell*, 201 N. Y. 194, 94 N. E. 634.

⁵ *Hoyt v. Thompson*, 19 N. Y. 207.

⁶ *Western Nat. Bank v. Wittman*, 31 Cal. App. 615, 161 Pac. 137; *Stevens v. Selma Fruit Co.*, 18 Cal. App. 242, 123 Pac. 212.

⁷ *Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559, A. C. 1918E 247.

⁸ *Ames v. Goldfield Merger Mines Co.*, 227 Fed. 292; *Bliss v. Kaweah Canal C. & I. Co.*, 65 Cal. 502, 4 Pac. 507; *Oliphant v. Home Builders*, 34 Cal. App. 720, 168 Pac. 700; *Tempel v. Dodge*, 89 Tex. 69, 32 S. W. 514, 33 S. W. 222.

transacting business with each other, so long as it cannot be shown that the individual directors have in some way abused the trust placed in them.⁹ The transaction in such case is not void but only voidable, and may be ratified by either party by conduct having that legal effect, and thereby made binding upon the party so ratifying it ¹⁰

⁹ *Smith v. Chase & Baker Piano & Mfg. Co.*, 197 Fed. 466; *Sausalito Bay Land Co. v. Sausalito Imp. Co.*, 166 Cal. 302, 136 Pac. 57; *Manning v. App. Consol. Gold Min. Co.*, 171 Cal. 610, 154 Pac. 301.

¹⁰ *San Diego O. T. & P. B. R. Co. v. Pacific Beach Co.*, 112 Cal. 53, 44 Pac. 333, 33 L. R. A. 788; *Mercantile Library Hall Co. v. Pittsburg Library Association*, 173 Pa. 30, 33 Atl. 744.

CHAPTER XXXIX.

OFFICERS AND AGENTS OF CORPORATIONS.

- § 696. Officers and Agents—In General.
- § 697. Appointment of Officers and Agents.
- § 698. Resolution Appointing General Manager.
- § 699. Resolution Appointing Special Agent.
- § 700. Powers of Attorney.
- § 701. Special Power of Attorney by Corporation.
- § 702. Resignation of Officers.
- § 703. Compensation of Officers and Agents.
- § 704. Power of the Agent to Bind the Corporation.
- § 705. Secret Instructions and Undisclosed By-Law Limitations.
- § 706. The Doctrine of Estoppel.
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- § 709. Powers and Duties of the President.
- § 710. Powers and Duties of the Vice-President.
- § 711. Powers and Duties of the President, Acting as General Manager.
- § 712. Powers and Duties of the Secretary.
- § 713. Powers of President and Secretary Acting Conjointly.
- § 714. Powers and Duties of the Treasurer.
- § 715. Resolution Selecting Bank.
- § 716. Treasurer's Bond.
- § 717. Powers and Duties of the General Manager.
- § 718. Authority of Committees.
- § 719. Delegation of Officers' Authority.
- § 720. Interest of Officer or Agent Adverse to Corporation.
- § 721. Compelling Performance of Duties by Officers.

§ 696. **Officers and Agents—In General.**—In different connections in which the question has arisen, it has been held that a mere agent of a private corporation is not an officer thereof within the meaning of statutes or regulations requiring certain acts to be done by an "officer."¹ One distinction between officers and agents of a corporation lies in the manner of their creation. An office is created by the charter of the corporation, and the officer is elected by the directors or the stockholders. An agency is usually created by the officers, or one or more of them, and the agent is appointed by the same authority. It is clear that the two

¹ Wheeler & Wilson Mfg. Co. v. Lawson, 57 Wis. 400, 15 N. W. 398.

terms, officers and agents, are by no means interchangeable. One, deriving its existence from the other, and being dependent upon that other for its continuation, is necessarily restricted in its powers and duties, and such powers and duties are not necessarily the same as those pertaining to the authority creating it. The officers, as such, are the corporation. An agent is an employee.²

The election, qualification, and tenure of office of directors is treated in another place.³

§ 697. Appointment of Officers and Agents.—Every corporation, as such, has power to appoint such subordinate officers or agents as its business may require, and to allow them suitable compensation.⁴ The actual work of the corporation must necessarily be performed by individuals as distinguished from the corporation itself. The employment of such persons rests with the board of directors exclusively, and is not within the providence of the stockholders as such.⁵

In the appointment of its agents, a corporation may select another corporation for matters consistent with or in furtherance of the objects of its organization, at least where the agency is not unlimited, even though exclusive.⁶ The appointment of an agent need not be made by resolution of the directors,⁷ or under seal,⁸ but may be inferred from his relation to the corporation or from its course of business.⁹

In order to establish an agency from a corporation, or an authority in a known and recognized agent to do certain acts on behalf of a corporation, it is not indispensable to show a written

² *Vardeman v. Penn Mutual Life Ins. Co.*, 125 Ga. 117, 54 S. E. 66, 5 A. C. 221.

³ See secs. 661 et seq.

⁴ California Civil Code, sec. 354; Idaho Comp. Stats. 1919, sec. 4752; Montana Rev. Codes 1921, sec. 5994.

⁵ *Bassett v. Fairchild*, 132 Cal. 637, 64 Pac. 1082, 52 L. R. A. 611.

⁶ *San Diego Water Co. v. San Diego Flume Co.*, 108 Cal. 549, 29 L. R. A. 839, 41 Pac. 495.

⁷ *Allen v. Central Counties Land Co.*, 21 Cal. App. 163, 131 Pac. 78.

⁸ *Leitch v. Marx*, 21 Cal. App. 208, 131 Pac. 328; *Ford v. Hill*, 92 Wis. 188, 66 N. W. 115, 53 A. S. R. 902.

⁹ *Crowley v. Genesee Min. Co.*, 55 Cal. 273; *Reardon v. Richmond Land Co.*, 21 Cal. App. 357, 131 Pac. 894.

authority, or vote, or resolution of the corporation.¹⁰ The terms of office of the officers and agents are in no way related to those of the directors. They serve at the will of the directors and may be removed at any time.¹¹ Any contract of employment for a stated period or for a certain work is, however, valid and binds the corporation and the individual employed, although it in no way affects the rights of third parties to deal with the agent after his discharge, even if in violation of the terms of the contract.

The directors content themselves, usually, with the appointment of such general officers as those required by law and possibly a general manager, leaving to them the duty of appointing from time to time as found necessary whatever sub-agents and employees as are needed to carry out the work assigned to them. The resolution of appointment of a general manager may be as follows:

§ 698. Resolution Appointing General Manager.

Be It Resolved, By the board of directors of the New Era Printing Company, that John Gordon be, and he is hereby, appointed general manager of this company, with power to generally supervise and direct its business, and such other powers as said board may from time to time confer upon him; that his salary be and is hereby fixed at two hundred dollars (\$200) per month, beginning immediately, and payable at the end of each month of actual service, as other salaries are now paid.

A form of appointment of a special agent to represent the corporation in a single transaction, or to make a particular contract, may be as follows:

§ 699. Resolution Appointing Special Agent.

Be It Resolved, By the board of directors of the New Era Printing Company, a corporation, that John Gordon be and he is hereby specially appointed and authorized, in the name, and on behalf of this company, to enter into a contract with the Universal Manufacturing Company of Philadelphia for the construction of a printing press specially designed for the uses of this company, the price and terms of payment therefor to be in accordance with the written proposition submitted by the said Universal Manufacturing Company.

¹⁰ *Curtin v. Salmon River Hydraulic Gold Min., etc., Co.*, 141 Cal. 308, 74 Pac. 851, 99 A. S. R. 75; *Brown v. Crown Gold Milling Co.*, 150 Cal. 376, 89 Pac. 86; *Hoffman v. Guy M. Rush Co.*, 27 Cal. App. 167, 149 Pac. 177.

¹¹ *Humboldt Savings & Loan Soc. v. Wennerhold*, 81 Cal. 528, 22 Pac. 920.

§ 700. Powers of Attorney.—The power of attorney is a formal instrument granting authority from a principal to an agent named in the instrument to do a particular thing in the name and on behalf of the principal. There is no limit to the power to thus confer authority except that which applies to the principal; and in the case of corporations, the board of directors may appoint an agent to do any act which the board itself has power and capacity to perform, except where a statute, or by-law, the articles or charter specially designates the board, or a particular officer or agent. Even where the act comes within the ordinary scope of a particular officer's duties, it is often deemed better to formally and specially authorize him by resolution of the board in order to forestall any question which might be raised as to his authority in the particular instance. Such resolution is in legal effect a power of attorney, and, when properly certified by the secretary, may be used as such. But usually when one not a corporate officer is appointed, the resolution closes with a clause directing the president, or the president and secretary, to execute and deliver a power of attorney as a separate instrument. In such cases a certified copy of the resolution authorizing the appointment should be delivered with the power of attorney. These together constitute conclusive proof of the agent's authority. The following form will be found useful for the purposes therein named, and may be easily adapted to other purposes:

§ 701. Special Power of Attorney by Corporation.

Know All Men by These Presents, That the New Era Printing Company, a corporation duly organized and existing by virtue of the laws of the state of, has made, constituted and appointed, and by these presents does make, constitute and appoint John Goode of the city of Washington, District of Columbia, its true and lawful attorney, for it, and in its name, place and stead, to grant, bargain and sell for such consideration and on such terms as he may approve, and as a whole, or in divisions and subdivisions, that certain tract or parcel of land owned by said corporation in the city of Washington, District of Columbia, described as follows:

(Here insert description as in a deed of trust or bargain and sale.) And the said corporation grants to its said attorney full power and authority to give leases upon and to collect and receive for said company all rents, derived from said property in any way from the date of this instrument until he shall find a purchaser therefor; and for said corporation and in its name and stead, either alone or jointly with others, as may be required

and necessary, to make, execute, acknowledge and deliver, good and sufficient deeds, conveyances, options, contracts, or leases upon or for said property, or for any part or parts thereof, or for any rights therein or thereon, giving and granting its said attorney full power and authority to do and perform any and every act and thing whatsoever requisite and necessary to be done in the premises, the said corporation hereby ratifying and confirming all that its said attorney shall lawfully do, or cause to be done, by virtue of the terms of this instrument.

In Witness Whereof, Said corporation has hereunto caused its corporate name to be signed by its president and its corporate seal to be affixed by its secretary at the city of Washington, District of Columbia, on this the 1st day of March, 1926.

NEW ERA PRINTING COMPANY.

By JAMES WILLARD,
President.

(Corporate Seal.)

Attest:

J. F. WESTON, Secretary.

(Acknowledgment.)

A power of attorney being in legal effect the mere appointment of an agent with a definition of his authority, may be revoked at any time prior to its having been so far executed that interests or rights have vested in favor of third parties. This proposition does not hold true, however, where it constitutes an agency coupled with an interest. In that case a clause should be added defining the interest of the agent and stating that it is irrevocable prior to full execution, or that it is irrevocable prior to a certain date or contingency.

A power of attorney authorizing a sale or conveyance of an interest in real estate, or to encumber real property, should be acknowledged according to the law of the state, district, territory, or foreign country where such real estate is situate.

§ 702. Resignation of Officers.—Resignation of officers do not, in form, differ materially from resignations of directors,¹² and may be as follows:

RESIGNATION OF PRESIDENT.

To the Board of Directors of the New Era Printing Company:

Gentlemen: I hereby resign as president of your company, and from its board of directors as a member thereof.

M. L. BENNETT.

This May 1st, 1926.

¹² See secs. 670 et seq.

RESIGNATION OF TREASURER.

To the Board of Directors of the New Era Printing Company:

Gentlemen: I hereby tender my resignation as treasurer of your company, to take effect as soon as my accounts can be examined and audited by the proper committee. I ask for the appointment of a committee for that purpose as soon as convenient. The funds of the company in my hands will be turned over to the board, or to my successor, upon demand.

This May 1, 1926.

Respectfully,

A. J. KNOX.

§ 703. Compensation of Officers and Agents.—The salary or compensation of corporate officers is usually fixed by a by-law or by a resolution, either of the directors or stockholders, but where no salary has been fixed none can be recovered.¹³ Corporate offices are usually filled by the chief promoters of the corporation, whose interest in the stock or in other incidental advantages is supposed to be a motive for executing the duties of the office without compensation, and this presumption prevails until overcome by an express prearrangement of salary.¹⁴ There is an exception to this rule, however, except in some jurisdictions,¹⁵ where the director performs onerous and necessary services, not necessarily incidental to his duty as director. In such a case the law implies an agreement on the part of the corporation to pay what the services are reasonably worth.¹⁶

In order, however, that the corporation may be held liable for services so rendered it must appear that the services were valuable as well as that they were rendered under such circumstances

¹³ *Brown v. Valley View Min. Co.*, 127 Cal. 630, 60 Pac. 424; *Wilson v. Brown*, 269 Pa. 225, 112 Atl. 1; *Wonderful Group Min. Co. v. Rand*, 111 Wash. 557, 191 Pac. 631.

¹⁴ *Kilpatrick v. Penrose Ferry Bridge Co.*, 49 Pa. 118, 88 A. D. 497; *Fitzgerald & Mallory Constr. Co. v. Gitzgerald*, 137 U. S. 98, 11 S. C. R. 36, 34 L. Ed. 608; *Red Bud Realty Co. v. South*, 96 Ark. 281, 131 S. W. 340; *McCarthy v. Mt. Tecarte Land & Water Co.*, 111 Cal. 328, 43 Pac. 956; *St. Louis A. & S. R. Co. v. O'Hara*, 177 Ill. 525, 52 N. E. 734, 53 N. E. 118; *Blue v. Capital Nat. Bank*, 145 Ind. 518, 43 N. E. 655.

¹⁵ *Althouse v. Cobaugh Colliery Co.*, 227 Pa. 580, 76 Atl. 316, 136 A. S. R. 908.

¹⁶ *Fitzgerald & Mallory Constr. Co. v. Fitzgerald*, 137 U. S. 98, 11 S. C. R. 36, 34 L. Ed. 608; *Bassett v. Fairchild*, 132 Cal. 637, 64 Pac. 1082, 52 L. R. A. 611; *Rosehill Cemetery Co. v. Dempster*, 223 Ill. 567, 79 N. E. 276; *Selley v. American Lubricator Co.*, 119 Iowa 591, 93 N. W. 590.

as to raise the presumption that the parties intended and understood that they were to be paid for, or at least that the circumstances were such that a reasonable man, in the same situation with the party who is benefited by them, would have understood that compensation was to be paid for them.¹⁷

Services rendered as manager,¹⁸ attorney,¹⁹ land commissioner,²⁰ and auditor¹ have been held to be outside the scope of the duties of a mere director. On the other hand, services rendered in making efforts to contract for the construction of the corporation's railroad,² in detecting the perpetrator of a robbery and recovering a portion of the money stolen,³ in superintending the construction of the company's wharf,⁴ and in procuring subscriptions to stock,⁵ have been looked upon as falling properly within the scope of the duties of a director. However, upon this latter point there seems to be room for a difference of opinion.⁶

Under the general principle which prohibits a director from acting for the corporation in a matter in which he is adversely interested, which is enforced with great vigor against officers voting salaries to themselves,⁷ it is well settled that where a salary or compensation is voted to a director, the vote is illegal, if it be

¹⁷ *Pew v. First Nat. Bank*, 130 Mass. 391, 395; *Graves v. Mono Lake Hydraulic Min. Co.*, 81 Cal. 303, 22 Pac. 665; *George D. Hope Lumber Co. v. Stewart* (Mo. App.), 241 S. W. 675; *Paine v. Kentucky Refining Co.*, 159 Ky. 270, 167 S. W. 375, A. C. 1915D 389.

¹⁸ *Ruby Chief Min. & Mill. Co. v. Prentice*, 25 Colo. 4, 52 Pac. 210; *Bassett v. Fairchild*, 132 Cal. 637, 64 Pac. 1082, 52 L. R. A. 611.

¹⁹ *Taussig v. St. Louis & K. R. Co.*, 166 Mo. 28, 65 S. W. 969, 89 A. S. R. 674.

²⁰ *Rogers v. Hastings & D. R. Co.*, 22 Minn. 25.

¹ *Paine v. Kentucky Refining Co.*, 159 Ky. 270, 167 S. W. 375, A. C. 1915D 389.

² *Cheaney v. Lafayette B. & M. R. Co.*, 68 Ill. 570, 18 A. R. 584.

³ *Stacy v. State Bank*, 4 Scam. (Ill.) 91.

⁴ *Burns v. Commencement Bay Land & Implement Co.*, 4 Wash. 558, 30 Pac. 668, 709.

⁵ *New York & N. H. R. Co. v. Ketchum*, 27 Conn. 170.

⁶ *Cheaney v. Lafayette B. & M. R. Co.*, 68 Ill. 570, 18 A. R. 584.

⁷ *McConnell v. Combination Min., etc., Co.*, 30 Mont. 239, 76 Pac. 194, 104 A. S. R. 703.

carried only by including the vote of the director who receives the pay or salary.⁸

A blanket resolution of a board of directors composed of five members fixing the salaries of the president, the secretary, and the treasurer, could not under this rule of law be properly passed, for but two disinterested directors would be qualified to vote upon it. A suggested course in this instance is to pass a separate resolution fixing the salary of each officer, the director concerned not voting in each case.⁹ However, there are decisions holding otherwise,¹⁰ since directors cannot in this manner evade the rule against voting themselves compensation.¹¹

A director, otherwise entitled to compensation for performing the duties of his office, may forfeit his right thereto, by maladministration.¹²

It has also been held no payment of compensation is permissible for an act prohibited by law.¹³

As regards the compensation of general employees and agents of a corporation the rules applicable to master and servant or principal and agent should be applied. It is not necessary that a resolution should be passed by the board of directors in order to bind the corporation in the matter of the employment of its servants.¹⁴

The regular payment of the monthly salaries at certain rates per month with the full knowledge of the directors of the corporation for a number of years without objection on the part of any director or other officer of the corporation is ample to preclude the

⁸ *Luthy v. Ream*, 270 Ill. 170, 110 N. E. 373, A. C. 1917D 368; *Boothe v. Summit Coal Min. Co.*, 55 Wash. 167, 104 Pac. 207, 19 A. C. 1255.

⁹ *Funsten v. Funsten Commission Co.*, 67 Mo. App. 559; *McNab v. McNab & Harlin Mfg. Co.*, 62 Hun 18, 16 N. Y. Supp. 448, 133 N. Y. 687, 31 N. E. 627.

¹⁰ *Davids v. Davids*, 135 App. Div. 206, 120 N. Y. Supp. 350; *Fitchett v. Murphy*, 26 Misc. Rep. 544, 56 N. Y. Supp. 322 (Rev. on other grounds, 46 App. Div. 181, 61 N. Y. Supp. 182).

¹¹ *Wonderful Group Min. Co. v. Rand*, 111 Wash. 557, 191 Pac. 631. See, also, *Mallory v. Mallory Wheeler Co.*, 61 Conn. 131, 23 Atl. 708.

¹² *Eaton v. Robinson*, 19 R. I. 146, 31 Atl. 1058, 32 Atl. 339, 29 L. R. A. 100.

¹³ *Dudley v. Collier*, 87 Ala. 431, 6 So. 304, 13 A. S. R. 55.

¹⁴ *Huffaker v. Krieger's Assignee*, 21 Ky. L. Rep. 887, 53 S. W. 288, 46 L. R. A. 384; *Dodge v. Lansing & S. Traction Co.*, 152 Mich. 100, 115 N. W. 1004.

corporation from contending either that there was no agreement to pay such amounts or that the services were not reasonably worth such amounts.¹⁵

If persons have contracted for the performance of certain services for a definite period at a fixed salary and the employment continues beyond the period agreed upon, in the absence of any new contract it will be presumed that the employment continued under the same contract and upon the terms originally fixed. But this presumption must yield to evidence showing a change of terms.¹⁶

§ 704. Power of the Agent to Bind the Corporation.—In the dealings of corporations, the law of agency is as applicable as in the case of dealings with individuals. For acts done by the agents of a corporation, in the due course of business, and of employment, the corporation is responsible, as an individual would be under similar circumstances.¹⁷ The general rule of agency that a person who deals with an agent is bound to take notice of, and is therefore presumed to know, the extent of the agent's authority, is fully applicable to persons dealing with another as the agent of a corporation.¹⁸

The rule is that corporations, like natural persons, are bound, and bound only, by the acts and contracts of their agents, done and made within the scope of the latter's authority.¹⁹ What the scope of the agent's authority is depends upon what conclusions a reasonable person is warranted in drawing from the acts of those who have appointed the agent.²⁰ If the corporation has clothed an agent with power to do an act upon the existence of some extrinsic

¹⁵ *Allen v. Central Counties Land Co.*, 21 Cal. App. 163, 167, 131 Pac. 78.

¹⁶ *Home Fire Ins. Co. v. Barber*, 67 Neb. 644, 93 N. W. 1024, 108 A. S. R. 716, 60 L. R. A. 927.

¹⁷ *Philadelphia W. & B. R. R. Co. v. Quigley*, 21 How. (U. S.) 202, 210, 16 L. Ed. 73; *Rae v. Heilig Theater Co.*, 94 Ore. 408, 185 Pac. 909; *First Nat. Bank v. Casselton Realty & Investment Co.*, 44 N. D. 353, 175 N. W. 720, 29 A. L. R. 911; *Carlquist v. Quayle*, 62 Utah 266, 218 Pac. 729.

¹⁸ *Caddy Oil Co. v. Sommer*, 186 Ky. 843, 218 S. W. 288; *Cobb v. Glenn Boom & Lumber Co.*, 57 W. Va. 49, 49 S. E. 1005, 110 A. S. R. 734.

¹⁹ *Chicago M. & St. P. R. Co. v. Des Moines Union R. Co.*, 254 U. S. 196, 41 S. C. R. 81, 65 L. Ed. 219.

²⁰ *Rich v. Edison Electric Co.*, 18 Cal. App. 354, 123 Pac. 230; *Eddy v. American Amusement Co.*, 21 Cal. App. 487, 132 Pac. 83.

fact necessarily and peculiarly within the knowledge of the agent, and the existence of which the act of executing the power is itself apparently a representation, a third person dealing with such agent in entire good faith, pursuant to the apparent power, may rely upon the representation, and the corporation is estopped from denying its truth to his prejudice.¹ On the other hand, a party dealing with an agent is not entitled to assume the existence of any unusual state of facts in order to bring the act of the agent within the scope of his ostensible powers. For instance, the cashier of a bank is not, by reason of his official position, presumed to have the power to bind it as an accommodation endorser on his individual note; and a payee who fails to prove that the cashier, as such, had authority to make the endorsement cannot recover against the bank.² In such cases the very character of the transaction is sufficient to put the party accepting the indorsement upon inquiry as to the authority of the agent. It would be otherwise, however, if such an agent had authority to "issue" or endorse negotiable paper on behalf of the company, in ordinary business transactions. Where that is the case, a *bona fide* purchaser of negotiable paper issued or endorsed by an agent possessing such general authority will be protected.³ But if the person who takes the commercial paper of a corporation has notice actual or constructive of the fact that the officer or agent of the corporation is exceeding his authority in the issuance of the paper, the corporation of course cannot be held liable.⁴

§ 705. Secret Instructions and Undisclosed By-Law Limitations.—It is apparent, from what has preceded, and is well settled judicially, that persons dealing with an agent within the scope of

¹ New York & N. H. R. R. Co. v. Schuyler, 34 N. Y. 30; Ashley Wire Co. v. Illinois Steel Co., 164 Ill. 149, 45 N. E. 410, 56 A. S. R. 187; Uline Loan Co. v. Standard Oil Co., 45 S. D. 81, 185 N. W. 1012, 27 A. L. R. 585; Sherman, Clay & Co. v. Buffum & Pendleton, 91 Ore. 352, 179 Pac. 241.

² West St. Louis Sav. Bank v. Shawnee, etc., Bank, 95 U. S. 557, 24 L. Ed. 490.

³ Merchants Nat. Bank v. Citizens Gas Light Co., 159 Mass. 505, 34 N. E. 1083, 38 A. S. R. 453; Mechanics Banking Co. v. New York & S. W. Lead Co., 35 N. Y. 505.

⁴ Chemical Nat. Bank v. Wagner, 93 Ky. 525, 20 S. W. 535, 40 A. S. R. 206; Cheever v. Pittsburgh S. & L. E. R. Co., 150 N. Y. 59, 44 N. E. 701, 55 A. S. R. 646, 34 L. R. A. 69.

his ostensible authority, are not bound by secret and undisclosed instructions limiting his ostensible powers.⁵ The same is true as to restrictions contained in by-laws of which third parties, dealing with the corporation, through an agent, have no notice. As a rule, outside parties are not charged with notice of what the by-laws contain. They may assume that an agent belonging to a particular class possesses the powers usually belonging to agents of that class, notwithstanding any by-law restrictions upon the authority of the particular agent of which they have no notice.⁶ For instance, since the officers of a banking company are held out to the public as having authority to act according to the general usage and practice of banks and course of their business, the acts of such agents, within the scope of such usage, practice and course of business, would, in general, bind the bank in favor of third parties possessing no other knowledge.⁷

In general, where an agent undertakes to perform acts not pertaining to the powers of the class to which he belongs, he must, in order to bind the corporation, be given special authority; and as to such acts, parties dealing with him may assume nothing as to his authority.⁸

§ 706. The Doctrine of Estoppel.—The articles fix extreme boundaries of authority for all corporate agents. No act, violative of the terms of these, or outside the purposes of forming the corporation, as set forth therein, binds the corporation of its own force and effect.⁹ But upon this rule has been engrafted the equi-

⁵ *Caddy Oil Co. v. Sommer*, 186 Ky. 843, 218 S. W. 288; *Howland Bros. & Cave v. Barre Sav. Bank & Trust Co.*, 89 Vt. 290, 95 Atl. 679; *California Inst. Co. v. Gracey*, 15 Colo. 70, 24 Pac. 577, 22 A. S. R. 376; *Parrot v. Mexican Cent. R. Co.*, 207 Mass. 184, 93 N. E. 590, 34 L. R. A. (N. S.) 261.

⁶ *Barber v. Stromberg-Carlson Tel. Mfg. Co.*, 81 Neb. 517, 116 N. W. 157, 129 A. S. R. 703, 18 L. R. A. (N. S.) 680; *Rathbun v. Snow*, 123 N. Y. 343, 25 N. E. 379, 10 L. R. A. 355; *Moyer v. East Shore Terminal Co.*, 41 S. C. 300, 19 S. E. 651, 44 A. S. R. 709, 25 L. R. A. 48.

⁷ *Minor v. Mechanics Bank*, 1 Pet. (U. S.) 46, 7 L. Ed. 47.

⁸ See *De Bost v. Albert Palmer Co.*, 35 Hun (N. Y.) 386; *Adriance v. Roome*, 52 Barb. (N. Y.) 399; *Rice v. Peninsular Club*, 52 Mich. 87, 17 N. W. 708.

⁹ *Martin v. Zellerbach*, 38 Cal. 300, 99 A. D. 365; *Taylor Feed Pen Co. v. Taylor Nat. Bank (Tex.)*, 181 S. W. 534; *Monument Nat. Bank v. Globe Works*, 101 Mass. 57, 3 A. R. 322.

table doctrine of estoppel, according to which, if the corporation has received and enjoyed the benefit of an act or contract performed on its behalf, it will be estopped, when liability is sought to be fixed upon it, on account of the act or contract, from setting up the defense that the transaction was beyond the corporate powers.¹⁰ In some cases waiver or ratification may even be implied from mere acquiescence or neglect of all the stockholders to object or take any action looking to a prevention of the *ultra vires* act.¹¹ The above principle is well illustrated in cases of an unauthorized issue of preferred stock where, under certain conditions and upon the observance of certain formalities, the issue would be legal, and the stockholders have remained silent and neglected, to either prevent its issue or to have the irregularity corrected.¹²

§ 707. Ratification of Unauthorized Acts of Officers and Agents.—The doctrines of ratification and estoppel are, generally speaking, as applicable to corporations as to individuals. A corporation, like an individual, may create an agency and confer authority by subsequent ratification, as well as by precedent authority, and subsequent ratification by the corporation of the acts of its officers is ordinarily equivalent to precedent authorization.¹³ Ratification will not, according to the general principles of agency, be presumed even where the corporation has received benefits of the transaction, unless actual knowledge of the specific act or contract out of which the benefits arose was made to appear, for without knowledge or notice there can be no ratification.¹⁴ Any

¹⁰ *Chafin v. Main Island Creek Coal Co.*, 85 W. Va. 459, 102 S. W. 291, 11 A. L. R. 657; *Dillon v. Myers*, 58 Colo. 492, 146 Pac. 268, A. C. 1916C 1032; *Kelly v. Central Union Fire Ins. Co.*, 101 Kan. 91, 165 Pac. 806, L. R. A. 1918C 1170; *Farmers' Nat. Bank v. Vaughn*, 89 Okla. 41, 213 Pac. 748; *Goodwin v. Central Broadway Building Co.*, 21 Cal. App. 376, 131 Pac. 896.

¹¹ *State v. Smith*, 48 Vt. 266; *Williams v. S. M. Smith Insurance Agency*, 75 W. Va. 494, 84 S. E. 235, A. C. 1917A 813; *McKell v. Chesapeake & O. R. Co.*, 175 Fed. 321, 99 C. C. A. 109, 20 A. C. 1097.

¹² See *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159.

¹³ *California Nat. Supply Co. v. Flack*, 183 Cal. 124, 190 Pac. 634; *Georgia Casualty Co. v. Massey*, 201 Ala. 601, 79 So. 33; *Frick v. Rockwell City Canning Co.*, 192 Iowa 11, 181 N. W. 475; *Farmers' Market v. Austin*, 118 Wash. 103, 203 Pac. 42.

¹⁴ *Pacific Vinegar & Pickle Works v. Smith*, 145 Cal. 352, 104 A. S. R. 42, 78 Pac. 550; *Emerson v. Fisher*, 246 Fed. 642; *Citizens Nat. Bank v. Blizzard*, 80 W. Va. 511, L. R. A. 1918A 129, 93 S. E. 338.

act of a corporate officer or agent, though done without authority, may, if within the powers, or in keeping with the purposes of the corporation, be ratified by its board of directors.¹⁵ A ratification by a corporation, as in the case of individuals, may be either express, as by a resolution of ratification adopted by the board of directors,¹⁶ or implied from subsequent conduct of the corporation.¹⁷ The following are general forms of ratification:

RESOLUTION RATIFYING ACT OF VICE PRESIDENT.

Be It Resolved, By the board of directors of the New Era Printing Company, in regular meeting assembled (or at a special meeting called for that expressed purpose), that the act of John Gordon, its vice president, in exchanging its former plant for one comprising modern machinery and appliances, and in paying \$3000 of the funds of this corporation for the difference, be and the same is hereby ratified, approved and confirmed as the act of this corporation.

RESOLUTION RATIFYING ACT OF SECRETARY.

Whereas, On or about the 1st day of March, 1926, the secretary, in the name of this company, borrowed one thousand dollars (\$1000) from the Safe Security Bank for the uses of this corporation;

And Whereas, At that time the only officer or agent having authority to so borrow money was the president;

And Whereas, Said action by the secretary was taken in the absence of the president from the city of Washington, the money so borrowed being urgently needed for the purposes of this company;

Now, Therefore, Resolved, That said act of the secretary of this company be and the same is hereby ratified, approved and confirmed, and said note given to said bank admitted to be the duly executed and delivered note of this corporation, and as of the same force and effect as if executed and delivered by the secretary under direct authority of, and instruction from this board.

§ 708. Liability of the Corporation for the Torts of Its Agent.—It was at one time the law that a corporation was in no way liable for the wrongful acts of its agents, the theory being that the articles conferred no power to do anything of a wrongful nature. It is now, however, a universal rule that a corporation is responsible for any injury inflicted upon the property or the personal rights of another by an officer or agent of the corpora-

¹⁵ *Waratah Oil Co. v. Reward Oil Co.*, 23 Cal. App. 638, 139 Pac. 91; *Grafeman Dairy Co. v. Northwestern Bank*, 290 Mo. 311, 235 S. W. 435.

¹⁶ *Ford Motor Co. v. Hotel Woodward Co.*, 271 Fed. 625.

¹⁷ *Smith v. First Nat. Bank*, 81 Okla. 228, 198 Pac. 103.

tion while acting in the course of his employment.¹⁸ Thus, a corporation may be held liable for trespass on real property,¹⁹ injury to personalty,²⁰ conversion of the property of another,¹ assault and battery,² false imprisonment,³ the wrongful death of another,⁴ a nuisance⁵, and infringement of patents.⁶ So also, a corporation is responsible for the negligence of its agents either in doing or failing to do a particular act.⁷

The liability is not affected by the fact that the agent's act was of a wilful nature, so long as he was engaged at the time in the performance of his delegated duties.⁸ The fact that the particular act is wrongful only when associated with some such mental element as fraud or malice in no way affects the responsibility of the corporation. Fraud perpetrated by an agent in the accomplishment of work for the corporation is looked upon as the fraud of the corporation.⁹ So, also, where malice is a necessary element in a right of action, the malice of its agents may be imputed to the

¹⁸ *White v. International Textbook Co.*, 173 Iowa 192, 155 N. W. 298.

¹⁹ *Bloodgood v. Mohawk & H. R. R. Co.*, 18 Wend. (N. Y.) 9, 31 A. D. 313.

²⁰ *Chicago & R. I. R. Co. v. Fell*, 22 Ill. 333.

¹ *Fishkill Sav. Inst. v. National Bank*, 80 N. Y. 162, 36 A. S. R. 595; *Semple v. Morganstern*, 97 Conn. 402, 116 Atl. 906, 26 A. L. R. 21.

² *McInerney v. United Railroads*, 50 Cal. App. 538, 195 Pac. 958; *Marx v. Edison Electrical Illuminating Co.*, 201 App. Div. 607, 194 N. Y. Supp. 807.

³ *Lynch v. Metropolitan El. R. Co.*, 24 Hun (N. Y.) 506, 90 N. Y. 77, 43 A. S. R. 141, 12 A. & E. R. C. 119; *Falls v. Palmetto Power & Light Co.*, 117 S. C. 327, 109 S. E. 93.

⁴ *Barboza v. Pacific Portland Cem. Co.*, 162 Cal. 36, 120 Pac. 767.

⁵ *Cogswell v. New York, N. H. & H. R. Co.*, 103 N. Y. 10, 8 N. E. 537, 57 A. S. R. 701; *Love v. Nashville Agricultural & Normal Institute*, 146 Tenn. 550, 243 S. W. 304, 23 A. L. R. 887.

⁶ *Kneass v. Schuylkill Bank*, Fed. Cas. No. 7875, 4 Wash. 14.

⁷ *Lannen v. Albany Gas Light Co.*, 44 N. Y. 459, 46 Barb. (N. Y.) 264; *Brown v. La Societe Francaise, etc.*, 138 Cal. 475, 476, 71 Pac. 516.

⁸ *Quigley v. Central Pac. R. Co.*, 11 Nev. 350, 21 A. S. R. 757; *Mott v. Consumers' Ice Co.*, 73 N. Y. 543; *Clark v. Bland*, 181 N. C. 110, 106 S. E. 491.

⁹ *Fifth Ave. Bank v. Forty-Second St. & G. St. R. Co.*, 137 N. Y. 231, 33 N. E. 378, 33 A. S. R. 712, 19 L. R. A. 331; *Bank of California v. Western Union Tel. Co.*, 52 Cal. 280, 287.

corporation. Thus, it may be held liable for libel,¹⁰ slander,¹¹ malicious interference with the business of another,¹² malicious prosecution,¹³ conspiracy,¹⁴ and adjudged to pay even exemplary damages, if the particular act was authorized, or afterwards sanctioned by the corporation.¹⁵

§ 709. Powers and Duties of the President.—The duties of the president, and in his absence, of the vice president, as the presiding officer at meetings of the stockholders and directors' meetings have already been outlined. We have yet to consider his duties and powers as an agent of the corporation, and the extent to which the corporation is bound by his acts.

Each particular act of the president of a private corporation, acting as such, may be tested by one or another of three inquiries. First, Is the act within the express powers conferred upon him by the board of directors, or incidental to those so conferred? Second, Is the act one usually performed by presidents of that class of corporations to which the one of which he is such officer, belongs? Third, Has he, or have other presidents of that particular corporation been in the habit of transacting that business, with the knowledge and consent, or acquiescence, of its board of directors? If an affirmative answer can be given to either of these questions with respect to the act in question, then the corporation is bound by it, unless the act be outside the express powers given him, and it be shown that the party claiming by virtue of the act had notice

¹⁰ *Maynard v. Fireman's Fund Ins. Co.*, 34 Cal. 48, 91 A. D. 672, 47 Cal. 207; *Choctaw Coal & Min. Co. v. Lillich*, 204 Ala. 533, 86 So. 383, 11 A. L. R. 1014.

¹¹ *Gilbert v. Crystal Fountain Lodge*, 80 Ga. 284, 4 S. E. 905, 12 A. S. R. 255; *Courtney v. American Ry. Express Co.*, 119 S. C. 511, 113 S. E. 332, 24 A. L. R. 128; *Allen v. Edward Light Co.*, 209 Mo. App. 165, 233 S. W. 953.

¹² *Merrills v. Tariff Mfg. Co.*, 10 Conn. 384, 27 A. D. 682.

¹³ *Morton v. Metropolitan Life Ins. Co.*, 34 Hun (N. Y.) 366, 103 N. Y. 645; *Ricord v. Central Pacific R. Co.*, 15 Nev. 167; *Chicago R. I. & P. R. Co. v. Gage*, 136 Ark. 122, 206 S. W. 141; *Zygmuntowicz v. American Steel & Wire Co.*, 240 Mass. 421, 134 N. E. 385.

¹⁴ *Buffalo Lubricating Oil Co. v. Standard Oil Co.*, 106 N. Y. 669, 12 N. E. 825, 8 N. Y. St. 876, 38 Hun (N. Y.) 637; *National Park Bank of New York v. Louisville & N. R. Co.*, 199 Ala. 192, 74 So. 69.

¹⁵ *Turner v. North Beach & M. R. Co.*, 34 Cal. 594; *Mendelsohn v. Anaheim Lighter Co.*, 40 Cal. 657; *Trabling v. California Nav. & Imp. Co.*, 121 Cal. 137, 53 Pac. 644; *Sparrow v. Vermont Sav. Bank*, 95 Vt. 29, 112 Atl. 205.

that, in the particular instance, the power had been conferred upon another agent, or expressly withheld from the president. Although the president is the presiding officer of the board of directors, he has no more power of management or disposal over the property and affairs of the corporation than any other single member of the board.¹⁶

While the extent of the inherent authority of the president is not clearly defined, it seems to be quite limited;¹⁷ he has no power, merely because he is president, to bind the corporation by contract, but rather only such power as has been given him by the by-laws and by the board of directors, and such other powers as may arise from his having assumed and exercised authority in the past with the apparent consent and acquiescence of the corporation, or which are in the ordinary course and conduct of its business.¹⁸

There is no inherent power in the president to sign the name of the corporation to commercial paper;¹⁹ and to render the corporation liable, in addition to showing the signature of the corporation by its president to a promissory note, the authority of the president must be shown.²⁰

In the absence of express authority from the board, the powers of the president depend largely upon the nature of the company's business. When a contract is made, in the name of the corporation by the president in the usual course of its business, which the board of directors has the power to authorize him to make, or the power to ratify after it is made, the contract is, though not strictly within the line of his ordinary duties, presumptively that of the corporation. This presumption will prevail until it be shown that such act was not authorized or ratified. The foregoing test may be applied and the authority of the president upheld, where he has offered a reward for information leading to the arrest of the absconding

¹⁶ *Black v. Harrison Home Co.*, 155 Cal. 121, 99 Pac. 494; *Copper King Min. Co. v. Hanson*, 52 Utah 605, 176 Pac. 623; *Templin Chicago B. & P. Ry. Co.*, 73 Iowa 548, 35 N. W. 634.

¹⁷ *Cope-Swift Co. v. John Schlaff Creamery Co.*, 223 Mich. 543, 194 N. W. 550.

¹⁸ *St. Clair v. Rutledge*, 115 Wis. 583, 92 N. W. 234, 95 A. S. R. 964; *Wilson v. Investment Co.*, 80 Ore. 233, 156 Pac. 249; *Grummett v. Fresno Glazed Cement Pipe Co.*, 181 Cal. 509, 185 Pac. 388.

¹⁹ *City Electric St. Ry. Co. v. First Nat. Exchange Bank*, 62 Ark. 33, 31 S. W. 89, 54 A. S. R. 282, 31 L. R. A. 535.

²⁰ *Star Mills v. Bailey*, 140 Ky. 194, 130 S. W. 1077, 140 A. S. R. 370.

teller of a bank,¹ also where the president has assigned a judgment recovered by the bank to a trustee for collection.² Thus, under the usages and customs of modern banking, the president of a bank is recognized as the executive head and most important agent in connection with banking operations; and his power is not limited to transactions expressly authorized by the board of directors.³

A corporation may be bound by contracts made by its president, or other chief officer, without express authority, by reason of a course of dealing on his part recognized by its board of directors, or their acquiescence in prior acts by him of the same character, from which authority, in the particular instance, is fairly inferable; provided, always, that his acts be within the powers of the corporation.⁴ On dealing with the president of a corporation, in the usual course of business, and within the powers which the president has been accustomed to exercise without objection from the directors, has the right to assume that the president has been invested with those powers.⁵

Without a resolution or other express authority from the board of directors, if they permit the president to exercise all the powers of the corporation for any considerable length of time, any act of his within the powers of the corporation will bind it. Under such circumstances his authority is supported by presumption of express authority.⁶

There are a few cases in which contracts of employment or agency have been held to be within the authority of a president merely by virtue of his office.⁷ Where the president is also the

¹ *Bank of Minneapolis v. Griffin*, 168 Ill. 314, 48 N. E. 154.

² *Guernsey v. Black Diamond Coal Co.*, 99 Iowa 471, 68 N. W. 777.

³ *Bartlett Estate Co. v. Fraser*, 11 Cal. App. 373, 105 Pac. 130.

⁴ *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 855; *West v. Prather & Co.*, 7 Cal. App. 81, 93 Pac. 892; *Eells v. Gray Bros. Crushed Rock Co.*, 13 Cal. App. 33, 108 Pac. 735.

⁵ *National Bank v. Vigo County*, 141 Ind. 352, 40 N. E. 799, 50 A. S. R. 330; *Thomas v. City Nat. Bank*, 40 Neb. 501, 58 N. W. 943, 24 L. R. A. 263; *Bell v. Hanover Nat. Bank*, 57 Fed. 821; *Scott v. Monte Cristo Oil, etc., Co.*, 15 Cal. App. 453, 457, 115 Pac. 64; *Scatena & Co. v. Van Loben Sels*, 19 Cal. App. 423, 126 Pac. 187.

⁶ See *Smith v. Smith*, 62 Ill. 493.

⁷ *Trawick v. Peoria & Ft. C. Street R. Co.*, 68 Ill. App. 156; *Model Clothing House v. Hirsch*, 42 Ind. App. 270, 85 N. E. 719; *Hardy v. Tittabawassee*

general manager or active business head of the corporation, there is practically no dissent from the view that ordinarily contracts of employment or agency are within the scope of his authority.⁸ The authority of the president of a small business corporation in charge of its business to employ the necessary help may arise from his having assumed and exercised the power under circumstances from which his agency will be implied.⁹

§ 710. Powers and Duties of the Vice-President.—A vice-president, or one who acts in the place of and instead of the president, is an officer well known and recognized by the law in incorporated companies.¹⁰ Such officer may act in the absence of the president with the same authority possessed by the president.¹¹ The absence of the president from the principal place of business is sufficient absence within the meaning of by-laws authorizing the vice-president to act in his place, although probably a temporary absence during some part of the day would not authorize action by the vice-president where no emergency demands immediate action.¹²

§ 711. Powers and Duties of the President, Acting as General Manager.—In some corporations it is found convenient and economical to turn over the entire control and management of its business to its president. In others the president owns practically all, or at least a controlling percentage of the stock, and by means thereof constitutes himself the general manager.

In either case, upon the adoption of a resolution to that effect,

Boom Co., 52 Mich. 45, 17 N. W. 235. To the contrary, see *Northwestern Packing Co. v. Whitney*, 5 Cal. App. 105, 89 Pac. 981; *Great Southern Accident and Fidelity Co. v. Guthrie*, 13 Ga. App. 288, 79 S. E. 162.

⁸ *Little Butte Consol. Mines Co. v. Girand*, 14 Ariz. 9, 123 Pac. 309; *Hoffman v. Guy M. Rush Co.*, 27 Cal. App. 167, 149 Pac. 177; *Warfield v. Wire Wheel Corp.*, 184 App. Div. 687, 172 N. Y. Supp. 390; *P. Curtis Ko Eune Co. v. Manayunk Yarn Mfg. Co.*, 260 Pa. 340, 103 Atl. 720, 5 A. L. R. 1483.

⁹ *Vincent v. S. Alexander's Sons Co.*, 85 Conn. 512, 84 Atl. 84; *Pettibone v. Lake View Town Co.*, 134 Cal. 227, 66 Pac. 218.

¹⁰ *In re Close*, 106 Cal. 574, 579, 39 Pac. 1067.

¹¹ *Streeten v. Robinson*, 102 Cal. 542, 36 Pac. 946; *Wagg-Anderson Woolen Co. v. J. H. Leshner & Co.*, 78 Ill. App. 678, 680; *Aaronson v. David Mayer Brewing Co.*, 26 Misc. Rep. 655, 56 N. Y. Supp. 387.

¹² *Bell v. Standard Quicksilver Co.*, 146 Cal. 699, 81 Pac. 17.

the president becomes clothed with practically all of the powers of the board of directors; or, it may be just as proper to say, he may then exercise all of the powers of the corporation, being limited with respect to his powers only by the provisions of the articles, the general law, and the by-laws.¹³

Intrusting the president with the management of the entire business is not the delegation of corporate rights and powers, but is a mere authorization of the president to perform for and in the name of the corporation the business it is authorized to transact.¹⁴ So the president of a manufacturing corporation, who is in the active conduct and management of the business, must be presumed to have all the powers of any agent exercising like control and management, and to have authority to do what is usually and ordinarily done by such agents or managers.¹⁵

§ 712. Powers and Duties of the Secretary.—The duties of the secretary pertaining to the keeping of the minutes of all meetings and the records of the corporation are treated in another place.¹⁶

As in the case of its other officers, a corporation is held to be bound by the acts of its secretary within the scope of the authority which is actually conferred upon him or which he is "held out" as having. But in the absence of such contingencies, it is difficult to state precisely the implied power which a secretary may exercise by virtue of his office. It seems to be clear that his implied powers, whatever they may be, are not very extensive. He has no inherent power to execute contracts which will bind the corporation.¹⁷ While the general rule no doubt is that a secretary is not ordinarily the fiscal agent of a corporation, and is not employed to bind it in transactions of a financial character, yet the business of

¹³ *Powers v. Schlicht Heat, Light & Power Co.*, 23 App. Div. 380, 48 N. Y. Supp. 237; *Senour Manfg. Co. v. Clarke*, 96 Wis. 469, 71 N. W. 883.

¹⁴ *Jones v. Williams*, 139 Mo. 1, 39 S. W. 486, 40 S. W. 353, 61 A. S. R. 436, 37 L. R. A. 682.

¹⁵ *Cedar v. H. M. Loud & Sons Lumber Co.*, 86 Mich. 541, 49 N. W. 575, 24 A. S. R. 134.

¹⁶ See secs. 733 et seq.

¹⁷ *Thomasson v. Grace M. E. Church*, 113 Cal. 558, 45 Pac. 838; *Chicago v. Stein*, 252 Ill. 409, A. C. 1912D 291, 96 N. E. 886; *Bradford Belting Co. v. Gibson*, 68 Ohio 442, 67 N. E. 888.

the corporation and the nature of his office may be such as that he may perform many and important acts for his corporation.¹⁸ The secretary may be vested by resolution of the board of directors, or by their acquiescence with knowledge in a course of dealing with all the authority of manager. In such cases, his power is as extensive as that of president acting as general manager. But this power is referable to his managerial relation purely, deriving no aid from the fact that he is also secretary.

§ 713. Powers of President and Secretary Acting Conjointly.—Neither the authority of the president nor that of the secretary is increased by the fact that they act conjointly.¹⁹ But the fact that certain corporations' actions are, according to the usages of business, authenticated by the signatures of the president and secretary, as corporate officers, warrants a presumption, in an instance of their acting together, that they were duly authorized by their principal, the corporation. Thus, since the president and secretary, acting together, usually execute in its name, deeds, mortgages, and all formal contracts which it has power to make, and since the secretary is the proper custodian of the corporate seal, a contract or other instrument so signed and bearing the imprint of the seal carries with it a presumption that the signatures of the president and secretary were duly authorized. One who takes such a contract, or other instrument, so executed, unless he have knowledge to the contrary, will be protected from loss on account of a lack of authority on the part of these corporate officers, provided the circumstances be not such as should arouse suspicion and excite inquiry in the mind of an ordinarily prudent individual.²⁰ But if the president and secretary should attempt to convey away property essential to the continuance of business, that fact should, of itself, be deemed sufficient to arouse suspicion and induce inquiry.

¹⁸ First Nat. Bank of Latrobe v. Garretson, 107 Iowa 196, 77 N. W. 856.

¹⁹ City Electric St. Ry. Co. v. First Nat. Exchange Bank, 62 Ark. 33, 34 S. W. 89, 54 A. S. R. 282, 31 L. R. A. 535; Chemical Nat. Bank of New York v. Wagner, 93 Ky. 525, 20 S. W. 535, 40 A. S. R. 206; Gould v. W. J. Gould & Co., 134 Mich. 515, 96 N. W. 576, 104 A. S. R. 624, 2 A. C. 519; Monongahela Nat. Bank v. Harmony Land Co., 226 Pa. 440, 75 Atl. 687, 18 A. C. 727.

²⁰ Winscott v. Guarantee Investment Co., 63 Mo. App. 367; Estes v. German Nat. Bank, 62 Ark. 7, 34 S. W. 85.

The true principle underlying the liability of the corporation for losses resulting to strangers dealing with the corporation from false representations of its agents, in matters falling within the general scope of the duties of the latter, is that such losses should fall upon the corporation; for the corporation, and not the person dealing with the agent, is responsible for the latter's appointment, the former having no means of ascertaining the facts, and being compelled, from the nature of the case, to rely upon the assurances of such agents, or not deal with the corporation at all.¹

The mere fact that a promissory note is signed by the president and secretary is not sufficient to establish the validity of the note, since there should be proof of the specific authority to affix the corporate name to the note as its obligation, or that the corporation precede the avails of the note, or that there was a course of business which justifies one in accepting it as the obligation of the corporation.²

It has been held that the president and secretary of a corporation, who are its managing officers, may, without a resolution of the board of directors, authorize a sales agent to guarantee the rents of customers.³

§ 714. Powers and Duties of the Treasurer.—The treasurer of a private corporation performs duties which are in their nature purely ministerial, although undoubtedly occasions may sometimes present themselves when he is called upon to exercise a sound discretion. He usually confines his attention to signing checks and receiving and attending to the safekeeping of the funds. His duties may be enlarged by the provisions of the by-laws, he being entrusted with other duties, such as countersigning stock certificates, keeping the ordinary books of account, making collections, etc. But even when that is the case, these duties are performed by him, not as any part of his duty as treasurer, but

¹ *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543, 99 A. D. 300.

² *National Bank v. H. P. Snyder Mfg. Co.*, 107 App. Div. 95, 94 N. Y. Supp. 892; *Bloomington v. Cushman*, 134 Minn. 445, 159 N. W. 1078. See, also, *Lloyd & Co. v. Matthews*, 223 Ill. 477, 79 N. E. 172, 114 A. S. R. 346, 7 L. R. A. (N. S.) 376; *Spencer v. Alki Point Transp. Co.*, 53 Wash. 77, 101 Pac. 509, 132 A. S. R. 1058.

³ *Depot Realty Syndicate v. Enterprise Brewing Co.*, 87 Ore. 560, 170 Pac. 294, 171 Pac. 223, L. R. A. 1918C 1001.

as those of any other agent specially employed for the purpose, and other principles than those governing the office of treasurer are applicable. When a banking company has not been elected treasurer of the corporation, as may be, and often is, the case, the board of directors may select a bank for keeping the account of the corporation, or may leave its selection to the treasurer. A resolution selecting a bank and directing the opening of an account with it may be as follows:

§ 715. Resolution Selecting Bank.

Be It Resolved, That this corporation, the New Era Printing Company, open an account with the Safe Security Bank, doing business at No. Pennsylvania Avenue, Washington, D. C., and that all funds of this company be deposited therein, such account to be in the name of this corporation; that such funds so deposited be withdrawn only by check signed by the treasurer and countersigned by the president; that the treasurer be and he is hereby authorized and directed to carry this resolution into effect, and to deposit in said bank all funds now in his hands, or that may hereafter come into his hands as treasurer of this corporation.

In all corporations whose transactions are of considerable financial magnitude, the treasurer is usually required to give a bond to secure fidelity in handling and accounting for the corporate funds. The execution, delivery and approval of the bond should be a condition precedent to the treasurer being entrusted with any funds. The following form is easily adaptable to any state. The approval of the bond should be by the board of directors entered in the minutes, and the secretary should make a memorandum thereof on the back of the bond:

§ 716. Treasurer's Bond.

Know All Men by These Presents, That we, James Knox of the city of Washington, District of Columbia, as principal, and J. J. Stetson and Warren Dumont, both of the city of Washington, District of Columbia, as sureties, are held and firmly bound unto the New Era Printing Company, a corporation, in the sum of twenty-five thousand dollars, to the payment of which to the said corporation, we, by these presents, jointly and severally, bind ourselves, our heirs, executors and administrators.

Upon condition that, whereas, the said James Knox has been elected treasurer of the said New Era Printing Company, a corporation, for the term of one year from the 1st day of March, 1926, and whereas, he may

hereafter be re-elected, or may continue to act as such officer for a longer period than one year.

Now, Therefore, If the said James Knox shall hereafter, in all respects, fully and faithfully perform and discharge the duties of said office so long as he shall occupy the same or continue therein, and shall, when properly so required, fully and faithfully account to the said corporation for all moneys, goods and properties whatsoever, for or with which the said James Knox may be in anywise accountable or chargeable to the said corporation, and if in the event of his death, resignation or removal from office, all books, papers, vouchers, money and other property of whatever kind in his custody belonging to the said corporation, shall be forthwith restored to the said corporation, then this obligation shall be void; otherwise it shall remain in full force and effect.

JAMES KNOX, (Seal.)

J. J. STETSON, (Seal.)

WARREN DUMONT. (Seal.)

(Acknowledgment.)

Endorsement by secretary. Approved March 1st, 1926. (See Minute Book, page)

§ 717. Powers and Duties of the General Manager.—A general manager is often elected as one of the officers of a corporation, or any officer may be *ex-officio* general manager under the provisions of the by-laws. The directors may, however, at any time appoint one of their number or some other person as general manager.

Whether the president or the secretary be also general manager, or the office of general manager be constituted separately, the authority and responsibilities appertaining to the office are the same. Whatever officer be clothed with the general management of the business of a corporation, he has the power to make such contracts and to transact such business as pertains to the management of the business of that class of corporations; and those dealing with it through such a representative, have legal justification for assuming that he possesses adequate powers within that limit, in the absence of notice to the contrary, or of circumstances which should lead a prudent person to inquire as to the real extent of his authority.⁴

⁴ *Prentice v. United States & Central Amer. Steamship Co.*, 58 Fed. 702; *Gane v. Loema Printing Co.*, 46 Ill. App. 456; *Greig v. Riordan*, 99 Cal. 316, 33 Pac. 550; *Rosemond v. Northwestern Autographic Reg. Co.*, 62 Minn. 374, 64 N. W. 925; *Preston v. Central California Water & Irr. Co.*, 11 Cal.

The authority of the general manager is not limited to that possessed by virtue of his office as president, but as incident to the management of the business.⁵ An officer held out by a corporation as its general manager has implied authority to execute contracts for it within the scope of its ordinary business.⁶

A general manager, having the exclusive management and conduct of a manufacturing and commercial enterprise, and, admittedly, the power to purchase stock, contract debts, and discount notes, may, when there is occasion for so doing, borrow money to pay debts and purchase goods, and give the corporation's negotiable note therefor.⁷ The authority of such a manager to borrow money need not be shown by an express order or resolution of the stockholders or board of directors. It may be implied, from the general powers of such a manager and the necessities and usages of the business.⁸

It seems that the vice-president and general manager of a corporation, who has general charge of its office and plant, has authority to bind it by a warranty, though the making of warranties is contrary to the custom of the trade.⁹

§ 718. Authority of Committees.—It is often convenient, and is entirely proper, for a board of directors to appoint a committee of its members, or designate a standing committee and authorize such committee to make a conveyance or contract, or attend to any matters of corporate business.¹⁰ Such committee, within the authority thus conferred, possesses all the power of the board, and

App. 190, 200, 104 Pac. 462; *Leitch v. Marx*, 21 Cal. App. 208, 131 Pac. 328. See *Neuhart v. George K. Porter Co.*, 23 Cal. App. 526, 531, 138 Pac. 951.

⁵ *Co-Operative Stores Co. v. Marianna Hotel Co.*, 128 Ark. 196, 193 S. W. 529; *Roben v. Ryegate Light & Power Co.*, 91 Vt. 402, 100 Atl. 768; *Sherman, Clay & Co. v. Buffum & Pendleton*, 91 Ore. 352, 179 Pac. 241.

⁶ *Uline Loan Co. v. Standard Oil Co.*, 45 S. D. 81, 185 N. W. 1012, 27 A. L. R. 585; *Pickens Co. v. Thomas*, 152 Ga. 648, 111 S. E. 27, 21 A. L. R. 1438.

⁷ *Francis v. Western Screen Co.*, 22 Cal. App. 32, 133 Pac. 327.

⁸ *Glidden & Joy Varnish Co. v. Interstate Nat. Bank*, 69 Fed. 912, 16 C. C. A. 534; *Scofield v. Parlin & Orendorff Co.*, 61 Fed. 804, 10 C. C. A. 83.

⁹ *Moorhead v. Minneapolis Seed Co.*, 139 Minn. 11, 165 N. W. 484, A. C. 1918E 481, L. R. A. 1918C 391.

¹⁰ *Union Pac. R. Co. v. Chicago, M. & St. P. R. Co.*, 163 U. S. 564, 16 S. C. R. 1173, 41 L. Ed. 265; *Olcott v. Tioga R. Co.*, 27 N. Y. 546, 84 A. D. 298.

it need not report to the board prior to signing the requisite papers and affixing the corporate seal.¹¹ It is essential, however, that a majority of the committee join in any action to bind the corporation.¹²

The committee has only such power to bind the corporation as is conferred upon it by the corporation or directors, and a resolution directing a committee of the board of directors merely to negotiate an agreement and report upon a matter does not authorize the committee to enter into a binding contract upon such matter without reporting.¹³

§ 719. Delegation of Officers' Authority.—Directors act as the corporation itself, as well as under a delegated authority from it, and may, as is usually the case, not only authorize the formal execution of corporate contracts by a committee of their members or by other officers or agents, but from the necessity of the case, though the power is generally expressly given, may appoint the necessary agents to carry on the ordinary business of the corporation, whether the agent is one of their own members or a stranger whose action within the scope of his authority will bind the corporation.¹⁴ The fact that power is expressly given by statute to the board of directors "to appoint such subordinate officers and agents as the business of the corporation may require," does not limit or diminish the common law power to delegate authority.¹⁵

§ 720. Interest of Officer or Agent Adverse to Corporation.—An agent stands in the position of a trustee charged with the care of his principal's interest. Therefore, he may not have any

¹¹ *Burrill v. President, Nahant Bank*, 2 Metc. (Mass.) 163, 166, 35 A. D. 395; *Andres v. Fry*, 113 Cal. 124, 45 Pac. 534; *Gashwiler v. Willis*, 33 Cal. 11; *Abbott v. 76 Land & W. Co.*, 87 Cal. 323, 25 Pac. 693.

¹² *Rockford R. I. & St. L. R. Co. v. Sage*, 65 Ill. 328, 16 A. R. 587.

¹³ *Chemical Nat. Bank of New York v. Wagner*, 93 Ky. 525, 20 S. W. 535, 40 A. S. R. 206; *Greensboro Gas Co. v. Home Oil & Gas Co.*, 222 Pa. 4, 70 Atl. 940, 128 A. S. R. 790.

¹⁴ *Olcott v. Tioga R. Co.*, 27 N. Y. 546, 84 A. D. 298; *Manson v. Curtis*, 223 N. Y. 315, 119 N. E. 559, A. C. 1918E 247. See, also, *Cummings v. State*, 47 Okla. 627, 149 Pac. 864, L. R. A. 1915E 774.

¹⁵ *Jones v. Williams*, 139 Mo. 1, 39 S. W. 486, 40 S. W. 353, 61 A. S. R. 436, 37 L. R. A. 682.

interest in a transaction which is adverse to that of his principal. This rule applies not only to the agents of natural persons, but also to the directors, officers, and other agents of a corporation.¹⁶

It is incumbent upon an agent of a corporation who seeks to enforce against the corporation a personal obligation which was contracted through his agency, to prove not only the obligation, but also that it is a fair and reasonable one.¹⁷ Furthermore, it is well settled that any secret profit obtained by an agent of a corporation by reason of any violation or disregard of any obligations incident to the fiduciary or quasi-trust relations that he occupied toward the corporation and the stockholders, cannot be retained by him but must be accounted for to the corporation.¹⁸ A director must turn over to the corporation his share of the profits resulting from an agreement that one working on a commission for the corporation will divide with him the commissions.¹⁹ So a director who takes a renewal to himself of a lease to the corporation of property will be held to have taken for its benefit,²⁰ and if he thereafter on request assigns it to the corporation, which assignment is invalid because not assented to by the lessor, he is answerable to the corporation for the excess of rent it is compelled to pay in order to obtain another lease of the property, together with the reasonable costs and expenses of obtaining it.¹

§ 721. Compelling Performance of Duties by Officers.—

Officers of a corporation who fail to perform their regular duties, as a result of which, the corporation is not conducted in accord-

¹⁶ *O'Connor Min. & Mfg. Co. v. Coosa Furnace Co.*, 95 Ala. 614, 10 So. 290, 36 A. S. R. 251; *Curtin v. Salmon River Hydraulic Gold Min., etc., Co.*, 130 Cal. 345, 62 Pac. 552, 80 A. S. R. 132; *Chemical Nat. Bank of New York v. Wagner*, 93 Ky. 525, 20 S. W. 535, 40 A. S. R. 206; *Millsaps v. Chapman*, 76 Miss. 942, 26 So. 369, 71 A. S. R. 547.

¹⁷ *Graves v. Mono Lake Co.*, 81 Cal. 303, 311, 22 Pac. 665; *San Francisco Water Co. v. Pattee*, 86 Cal. 629, 25 Pac. 135; *Miner v. Belle Isle Ice Co.*, 93 Mich. 97, 53 N. W. 218, 17 L. R. A. 412.

¹⁸ *Janney v. Minneapolis Industrial Exposition*, 79 Minn. 488, 82 N. W. 984, 50 L. R. A. 273; *Hoyle v. Plattsburg & M. R. Co.*, 54 N. Y. 314, 13 A. R. 595.

¹⁹ *Western States Life Ins. Co. v. Lockwood*, 166 Cal. 185, 190, 135 Pac. 496.

²⁰ *McCourt v. Singers-Bigger*, 145 Fed. 103, 76 C. C. A. 73, 7 A. C. 287.

¹ *McGaw v. Acker, Merrill, etc., Co.* 111 Md. 153, 73 Atl. 731, 134 A. S. R. 592.

ance with its articles and by-laws, may be compelled to do so through a writ of mandamus. Thus, if the directors fail to call the annual meeting, as a result of which a new board of directors may not be elected, a stockholder may sue such directors, or if unable to reach them, the corporation. The court may order a meeting before a certain date, and in the event of a failure of the directors to call such a meeting, the stockholders may meet on that date, elect new directors, and, through the new board, mandamus the old board to deliver up the books.²

² Potomac Oil Co. v. Dye, 14 Cal. App. 674, 113 Pac. 126, 130.

CHAPTER XL.

LIABILITY OF OFFICERS AND AGENTS.

- § 722. Liability of Directors—In General.
- § 723. Liability of Directors for Acts of Agents.
- § 724. Limitation of Actions against Directors for Misconduct.
- § 725. Laches as Affecting Right to Relief Against Directors for Violation of Trust.
- § 726. When Liability of Directors Commences.
- § 727. Personal Liability of Directors for Misappropriation.
- § 728. Contract to Relieve Directors Void.
- § 729. Liability for Excessive Debts and Improper Dividends.
- § 730. Liability With Respect to Reports.
- § 731. Criminal Liability of Officers and Agents.
- § 732. Extraterritorial Enforcement of Statutory Liability.

§ 722. Liability of Directors—In General.—The directors of a corporation are bound to care for its property and manage its affairs in good faith, and for a violation of these duties resulting in waste of its assets or injury to the property they are liable to account the same as other trustees.¹ And there could be no doubt that if they do acts clearly beyond their power, whereby loss ensues to the corporation, or dispose of its property or pay away its money without authority, they will be required to make good the loss of their private estates.²

Directors are liable for losses of the corporation caused by their willful and intentional departures from duty, their fraudulent breaches of trust, and their gross negligence.³ However, where reasonable care and diligence and good faith have been exercised, the directors are not liable for losses resulting to the corporation from mere errors of judgment on their part.⁴

¹ *United Zinc Cos. v. Harwood*, 216 Mass. 474, 103 N. E. 1037, A. C. 1915B 948; *General Rubber Co. v. Benedict*, 215 N. Y. 18, 109 N. E. 96, L. R. A. 1915F 617; *Besseliew v. Brown*, 177 N. C. 65, 97 S. E. 743, 2 A. L. R. 862; *Lake Harriet State Bank v. Venie*, 138 Minn. 339, 165 N. W. 225.

² *Godley v. Crandall & Godley Co.*, 212 N. Y. 121, 105 N. E. 818, L. R. A. 1915D 632; *Winchester v. Howard*, 136 Cal. 432, 64 Pac. 692, 69 Pac. 77, 89 A. S. R. 153.

³ *Fox v. Hale & Norcross Silver Min. Co.*, 108 Cal. 369, 41 Pac. 308; *Horn Silver Min. Co. v. Ryan*, 42 Minn. 196, 44 N. W. 56.

⁴ *United Zinc Cos. v. Harwood*, 216 Mass. 474, 103 N. E. 1037, A. C. 1915B

It is the duty of the officers and directors of a corporation to conduct its affairs so as to carry out the purposes of its organization to succeed in the business enterprise in hand, to preserve its property, and to recognize and protect the rights and claims of all parties in interest. If they fail in doing this it is their duty to bring the affairs of the corporation to a conclusion.⁵

§ 723. Liability of Directors for Acts of Agents.—The directors are not sureties to the corporation for the fidelity of an inferior officer or agent appointed by them, so as to be liable for his embezzlements and defalcations if they have acted prudently and in good faith and had no knowledge that he was untrustworthy.⁶ However, if the board of directors of a corporation delegate its business and the whole management and control thereof to its executive officers, they cannot, when disaster to the stockholders and creditors ensues through carelessness and mismanagement, avoid personal liability on the ground that they did not know of the unfortunate transactions and were ignorant of the business,⁷ since directors must exercise a reasonable supervision of the affairs of the corporation.⁸

§ 724. Limitation of Actions Against Directors for Misconduct.—As a general rule, the statute of limitations begins to run against an action against directors of a corporation for their malfeasance or nonfeasance from the time of the perpetration of the wrongs complained of, except in the case of their fraudulent concealment, in which case the statute does not commence to run until their discovery or until the time, prior thereto, when the exercise of reasonable vigilance would have disclosed them.⁹

948; *Godbold v. Branch Bank at Mobile*, 11 Ala. 191, 46 A. D. 211; *Briggs v. Spaulding*, 141 U. S. 132, 11 S. C. R. 924, 35 L. Ed. 662.

⁵ *Brent v. B. E. Brister Saw Mill Co.*, 103 Miss. 876, 60 So. 1018, A. C. 1915B 576, 43 L. R. A. (N. S.) 720.

⁶ *King v. Livingston Mfg. Co.*, 192 Ala. 269, 68 So. 897; *Murphy v. Penniman*, 105 Md. 452, 66 Atl. 282, 121 A. S. R. 583.

⁷ *Warren v. Robison*, 19 Utah 289, 57 Pac. 287, 75 A. S. R. 734; *Briggs v. Spaulding*, 141 U. S. 132, 11 S. C. R. 924, 35 L. Ed. 662.

⁸ *McEwen v. Kelly*, 140 Ga. 720, 70 S. E. 777; *Williams v. McKay*, 46 N. J. Eq. 52, 18 Atl. 824.

⁹ *Thomas v. Richter*, 88 Wash. 451, 153 Pac. 333; *Link v. McLeod*, 194 Pa. 566, 45 Atl. 340.

§ 725. **Laches as Affecting Right to Relief Against Directors for Violation of Trust.**—It seems to be well settled that the right to relief against a director of a private corporation for breach of trust is barred by laches, where the complainant, with full knowledge of the material facts, waits an unreasonable time before seeking relief.¹⁰ In most jurisdictions the length of the delay, after knowledge of misconduct by directors, which is deemed to constitute laches, depends on the question of reasonableness under the special circumstances of the case. A delay of not more than six months from the discovery of fraud by directors, before seeking relief on account thereof, will not ordinarily constitute laches.¹¹ In the absence of unusual circumstances, a delay of five to nine years after knowledge of the facts deprives a complaining stockholder or corporation of its remedy against directors who have been derelict in the performance of their obligations.¹²

Clearly, a delay in bringing suit after actual notice of misconduct by directors, and after the intervention of rights of interested third persons, will cut off the aggrieved person's right to relief from such misconduct.¹³

Delay in seeking relief prior to the time of acquiring knowledge of a director's breach of trust, or the gaining of such information as reasonably to place the complainant on inquiry, does not constitute laches.¹⁴

The defense of laches, as a general rule, is not available to a director who has, by some affirmative act, attempted to conceal his violation of trust from the complaining stockholders, provided relief is sought within a proper time after discovery of the dereliction.¹⁵

¹⁰ *Twin-Lick Oil Co. v. Marbury*, 91 U. S. 587, 23 L. Ed. 328, 3 M. M. R. 688; *Montgomery Light Co. v. Lahey*, 121 Ala. 131, 25 So. 1006; *Marks v. Evans*, 6 Cal. Unrep. 505, 62 Pac. 76; *Tierney v. United Pocahontas Coal Co.*, 85 W. Va. 545, 102 S. E. 249.

¹¹ *Morgan v. King*, 27 Colo. 539, 63 Pac. 416; *Almy v. Almy*, *Bigelow & Washburn*, 235 Mass. 227, 126 N. E. 419; *Yeaman v. Galveston City Co.*, 106 Tex. 389, 167 S. W. 710, A. C. 1917E 191.

¹² *Calivada Colonization Co. v. Hays*, 119 Fed. 202; *Doane v. Preston*, 183 Mass. 569, 67 N. E. 867.

¹³ *Hatch v. Lucky Bill Min. Co.*, 25 Utah 405, 71 Pac. 865.

¹⁴ *Endicott v. Marvel*, 81 N. J. Eq. 378, 87 Atl. 230.

¹⁵ *Backus v. Brooks*, 195 Fed. 452, 115 C. C. A. 354; *Von Arnim v. American Tube Works*, 188 Mass. 515, 74 N. E. 680.

§ 726. When Liability of Directors Commences.—There must be an acceptance of the office of director before any liability can flow from the failure to discharge the duties of the office.¹⁶ The mere election of a trustee, under a general act for the formation of manufacturing and mining companies, does not render him liable for the debts of the corporation because of a failure to comply with the law; there must be evidence of an express or implied acceptance of the office.¹⁷

§ 727. Personal Liability of Directors for Misappropriation.—In some of the states are found constitutional provisions that the directors or trustees of corporations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation during the term of office of such director or trustee.¹⁸

It appears to be now well settled: (1) That such provisions are self-executing, that is, that a suit is maintainable to enforce the liability without action by legislators;¹⁹ (2) that directors taking office where such a provision exists, assume the relation of sureties, to the same extent as if they should sign a bond agreeing to answer for the honesty of the corporate officers;²⁰ (3) that the proper remedy to enforce the liability is by bill in equity making all the corporate creditors as well as the directors sought to be charged, parties;¹ (4) that the right of action to enforce the liability follows the debt against the corporation, and, therefore, is maintainable by the assignee of a creditor;² (5) that the creditor's claim need not be

¹⁶ *Bank of Des Arc v. Moody*, 110 Ark. 39, 161 S. W. 134; *Zimmerman v. Western & Southern Fire Ins. Co.*, 121 Ark. 408, 181 S. W. 283, A. C. 1917D 513.

¹⁷ *Cameron v. Seaman*, 69 N. Y. 396, 25 A. R. 212.

¹⁸ California, Article XII, sec. 3 of the Constitution.

¹⁹ *Winchester v. Howard*, 136 Cal. 432, 89 A. S. R. 153, 64 Pac. 692, 69 Pac. 77; *In re Brown*, 164 Fed. 673, 90 C. C. A. 489; *In re Bartnett*, 164 Fed. 679, 90 C. C. A. 495.

²⁰ *Moss v. Smith*, 171 Cal. 777, 155 Pac. 90; *Winchester v. Howard*, 136 Cal. 432, 89 A. S. R. 153, 64 Pac. 692, 69 Pac. 77.

¹ *Moss v. Smith*, 171 Cal. 777, 155 Pac. 90; *Winchester v. Mabury*, 122 Cal. 522, 55 Pac. 393; *In re La Jolla Lumber & Mill Co.*, 243 Fed. 1004; *Stone v. Chisolm*, 113 U. S. 302, 5 S. C. R. 497, 28 L. Ed. 991.

² *Winchester v. Howard*, 136 Cal. 432, 64 Pac. 692, 69 Pac. 777, 89 A. S. R. 153; *Brackett v. Griswold*, 103 N. Y. 425, 9 N. E. 438; *Davis v. Mills*, 99 Fed. 39.

reduced to judgment against the corporation before suing the director;³ (6) that the action may be maintained by a creditor who becomes such after the occurrence of the misappropriation or embezzlement.⁴

Such provisions are not to be construed to warrant the recovery from directors for losses resulting from mere acts of negligence, or imprudence in the investment of corporate funds, either by themselves or by officers of the corporation.⁵ The misappropriations meant are such as resemble embezzlements, as, for instance, misappropriations by an officer of funds intrusted to him for a special purpose, by devoting them to some unauthorized purpose.⁶

An action against a director under the terms of such constitutional provisions must be brought within the statutory period after the discovery by the aggrieved party of the facts upon which the liability was created.⁷

This liability is contractual, not penal, in its nature, and a cause of action to enforce it by an injured party survives his death and may be prosecuted against his administrator.⁸ It is such that a writ of attachment will issue thereon.⁹

§ 728. Contract to Relieve Directors Void.—Any contract, verbal or written, whereby it is sought directly or indirectly to relieve any director of a corporation from any liability imposed by such a provision of the law is usually declared to be null and void.¹⁰

§ 729. Liability for Excessive Debts and Improper Dividends.—In most states, the directors of corporations may not (1) make dividends, except from the surplus profits arising from the business thereof; (2) create any debts beyond their subscribed

³ *Patterson v. Stewart*, 41 Minn. 84, 42 N. W. 926, 16 A. S. R. 671, 4 L. R. A. 745.

⁴ *Winchester v. Howard*, 136 Cal. 432, 64 Pac. 692, 69 Pac. 777, 89 A. S. R. 153.

⁵ *Fox v. Hale & Norcross Silver Min. Co.*, 108 Cal. 369, 41 Pac. 308.

⁶ *Winchester v. Howard*, 136 Cal. 432, 64 Pac. 692, 69 Pac. 777, 89 A. S. R. 153; *Hercules Oil Ref. Co. v. Hocknell*, 5 Cal. App. 702, 91 Pac. 341; *Fox v. Hale & Norcross Silver Min. Co.*, 108 Cal. 369, 41 Pac. 308.

⁷ California Code of Civil Procedure, sec. 359.

⁸ *Major v. Walker*, 23 Cal. App. 465, 138 Pac. 360.

⁹ *O'Connell v. Walker*, 12 Cal. App. 694, 108 Pac. 668.

¹⁰ California Civil Code, sec. 327.

capital stock; (3) divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except upon dissolution and liquidation; (4) reduce or increase the capital stock, except as provided by law. For the performance of any of these acts the directors under whose administration they may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted.¹¹

The liability of the directors being not only several but also joint, the creditors of the corporation may resort to one director for the amount of the whole loss if the other directors are unable to pay their shares.¹²

§ 730. Liability With Respect to Reports.—In order to discourage willful misrepresentations by corporate officers, some statutes provide that any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby, and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.¹³

In an action under such a statute, before proof of damages resulting by reason of the transaction will be permitted, the alleged report or notice or certificate concerning the corporation or its business must first be shown, followed by a showing that it was made by an officer of the corporation to the plaintiff, and that it was false.¹⁴

¹¹ California Civil Code, sec. 309; Idaho Comp. Stats. 1919, sec. 4715; Montana Rev. Codes 1921, sec. 5939. See, also, statutory provisions of other states.

¹² Talcott Land Co. v. Hershisier, 184 Cal. 748, 195 Pac. 653. See, also, Swartley v. Oak Leaf Creamery Co., 135 Iowa 573, 113 N. W. 496.

¹³ California Civil Code, sec. 316; Idaho Comp. Stats. 1919, sec. 4722; Montana Rev. Codes 1921, sec. 5942; South Dakota Rev. Code 1919, sec. 8790. See statutory provisions of other states.

¹⁴ Smeland v. Renwick, 50 Cal. App. 565, 196 Pac. 283.

§ 731. **Criminal Liability of Officers and Agents.**—In most states there are found penal statutes prescribing punishments for various acts by officers and agents of corporations. Typical offenses which subject agents of corporations to punishment are the following: (1) Securing subscriptions to stock by fictitious persons; (2) deceiving state officials by false entries or records as to the assets of the corporation; (3) unauthorized use of names of persons in a prospectus; (4) overdrawing an account with a bank of which one is an officer; (5) receiving deposits in a bank known to the officer to be insolvent; (6) fraudulent manipulation of the records of a corporation; (7) knowingly publishing a false report or prospectus; (8) refusal to permit inspection of records by stockholders; (9) failure of director to object to a declaration of dividends not justified by the surplus profits, or to an improper withdrawal by stockholders of the capital stock.¹⁵

§ 732. **Extraterritorial Enforcement of Statutory Liability.**—The weight of authority supports the view that a statute of the state or country of incorporation, which imposes a personal liability for or in respect of debts or contracts of a private corporation upon the officers or directors because of the violation of specific statutory requirements or the breach of specific duties enjoined upon them for the protection of the corporation and those who deal with it, is not penal in the sense of the principle that a court of one state or country will not enforce the penal laws of another; and consequently, in the absence of other valid objections, the statutory liability may be enforced in the courts of a state or country other than that in which it arose.¹⁶ Though overborne by the contrary decisions, there are a few decisions holding that such statutes are penal in the sense of the principle that a court of one state or country will not enforce the penal laws of another.¹⁷

¹⁵ See California Penal Code, secs. 564 et seq.; Idaho Comp. Stats. 1919, secs. 8505 et seq.; Montana Rev. Codes 1921, secs. 11446 et seq.; Arizona Rev. Stats. 1913, secs. 549 et seq.

¹⁶ *Huntington v. Attrill*, 146 U. S. 657, 13 S. C. R. 224, 36 L. Ed. 1123; *Sherman & Sons Co. v. Bitting*, 26 Ga. App. 299, 105 S. E. 848; *Great Western Machinery Co. v. Smith*, 87 Kan. 331, 41 L. R. A. (N. S.) 379, 124 Pac. 414, A. C. 1913E 243.

¹⁷ *Nesbitt v. Clark*, 272 Pa. 161, 116 Atl. 404, 25 A. L. R. 1406; *Commercial Nat. Bank v. Kirk*, 222 Pa. 567, 71 Atl. 1085, 128 A. S. R. 823.

CHAPTER XLI.

DUTIES OF THE SECRETARY.

- § 733. Importance of the Secretary's Work.
- § 734. Stockholders' Meetings.
- § 735. Preparing the Order of Business.
- § 736. Lists of Stockholders and Members for Use at Meetings.
- § 737. Keeping the Minutes.
- § 738. Minutes of First Meeting of Stockholders.
- § 739. Minutes of Other Than First Meeting.
- § 740. Minutes of Adjourned Meeting of Stockholders.
- § 741. Minutes of Annual Meeting of Stockholders.
- § 742. Meetings of the Board of Directors.
- § 743. Order of Business for Directors' Meeting.
- § 744. Minutes of Meeting of Board of Directors.
- § 745. Minutes of Special Meeting of Board of Directors.
- § 746. Minutes of Regular Monthly Meeting of Directors.
- § 747. Minutes of a Regular Meeting of Directors, Showing Correction of Error and Re-levy of Assessment.
- § 748. Certified Copies of the Records.
- § 749. Certified Copy From Minutes.
- § 750. Certified Copy of By-Law.
- § 751. Affidavit by Secretary as to Correctness of Copy of Records.

§ 733. Importance of the Secretary's Work.—Too great care cannot be exercised in the selection of a secretary; for, upon the accuracy of the performance of his duties depends the "smooth running" of the corporation. The records kept by him are in many cases *prima facie* evidence of the matters therein noted, and in every case, are naturally relied upon by the stockholders and other officers as a guide.

§ 734. Stockholders' Meetings.—The most onerous duties and labors pertaining to meetings of stockholders must be performed by the secretary. His duties in connection with the calling of meetings have already been detailed. Throughout each meeting, however, he must be ever on the alert to note the proceedings, and to see that they are conducted properly; for, although the president is the presiding officer, he must rely upon the secretary and his knowledge of the records of the corporation for guidance.

§ 735. **Preparing the Order of Business.**—The secretary should prepare the order of business for the use of the presiding officer at meetings. It may be as follows:

ORDER OF BUSINESS OF STOCKHOLDERS' MEETING.

1. Calling to order.
2. Calling the roll.
3. Production and proof of notice of the meeting.
4. Reading and disposal of any unapproved minutes.
5. Annual reports of officers and committees.
6. Election of directors.
7. Unfinished business.
8. New business.
9. Adjournment.

The above order may be used for a special as well as a regular stockholders' meeting, by passing over without action any matters not mentioned in the call for the meeting.

§ 736. **Lists of Stockholders and Members for Use at Meetings.**—Even where there are no statutory or by-law provisions requiring it, it is convenient, and practically indispensable, that the secretary provide and keep an alphabetical list of the stockholders or members, with their addresses, and in the case of a capital stock corporation, the number of shares held by each of them. In other corporations having no capital stock, the last column in the following form may be omitted:

ALPHABETICAL MAILING LIST OF STOCKHOLDERS.

The New Era Printing Company.

Name.	P. O. Address.	No. of Shares.
Robert Ainslee	Georgetown, D. C.....	100
M. L. Bennett	Georgetown, D. C.....	25
H. L. Brown.....	20 Wall Street, New York.....	65
John Gordon	Sunrise, Va.	200
E. P. Jones.....	Box 900, Washington, D. C.....	10
James Knox	1800 Vermont Avenue, Washington, D. C.....	400
Asa Roberts	800 Capital Avenue, Washington, D. C.....	400
J. F. Weston.....	Newton, Md.	50
James Willard	1148 Laurel Avenue, Baltimore, Md.....	100

The above list is for ordinary uses—mailing notices, payment of dividends, etc. For the purposes of a stockholders' meeting the following will suffice:

LIST OF STOCKHOLDERS FOR MEETINGS

of

The New Era Printing Company.

Name.	Shares Owned.	Shares Absent.	Present in Person.	Present by Proxy.
Ainslie, Robt.	100	100		
Bennett, M. L.	25			25 J. F. Weston
Brown, H. L.	65			65 J. F. Weston
Gordon, John	200		200	
Jones, E. P.	10		10	
Knox, James	50			50 John Gordon
Roberts, Asa	400		400	
Weston, J. F.	50		50	
Willard, James	100		100	
	<hr/> 1000	<hr/> 100	<hr/> 760	<hr/> 140

This list should be prepared before the meeting. Only the first column, showing the names of all the stockholders, and the second, showing the number of shares held by each of them, can be completed prior to the opening of the meeting, except as to the proxies held by the secretary himself, and such proxies as may have been previously handed to him. By subtracting the footing of the absent stock (third column) from the total number of shares (second column), it can readily be seen whether a quorum is present and represented. If the corporation have no capital stock, the second and third columns will be omitted, and check marks will be used in the fourth and fifth to denote the presence of a member, whether in person or by proxy.

§ 737. **Keeping the Minutes.**—The secretary of a private corporation whose business is worth recording at all occupies, with respect to the keeping of the minutes, a position the importance of which is not to be compared with that of any other office. Upon the question of whether accurate entries be made of the proceedings may depend other questions affecting interests of great magnitude and value. Skill and talent herein would not be important if a set formula could be given for every transaction of which a record is required. But in practice the business of the average corporation formed for profit assumes many places, and the secretary should be qualified to adapt the entries to the nature of the business done and present the matter in clear, concise, unambiguous language. A verbatim report is not generally required, nor is it desirable, as a rule. But a record of the substance of all impor-

tant proceedings, however little be their importance, should be made. Only those matters formally acted upon, however, should be noted, no account being taken of the details of a general discussion, and no personal comment being made in the minutes by the secretary himself upon the proceedings or any part thereof. Of course, the secretary cannot ordinarily enter the record in the minute book while the meeting is being held. He keeps what is termed "rough minutes," consisting of a brief statement of the proceedings, with as much detail as circumstances will admit of, including a reference to any letters, reports, or other documentary evidence presented at the meeting. These he should make and refer to as "Exhibit A," "Exhibit B," etc.

As a rule, the secretary is able to complete the minutes in advance for an annual stockholders' meeting, at which certain matters are always attended to and disposed of in the same way. By using an advance draft of the minutes at a meeting, and indicating by marks the insertion of details, which are noted as the meeting progresses, on separate sheets of paper, greater accuracy will be secured than by attempting to take the whole down in long hand during the meeting. Soon after adjournment, or at least while the proceedings are fresh in his mind, he should record the minutes *in extenso* in the minute book. It is seldom necessary to copy therein any matters which have been presented in written form, unless he has been directed at the meeting to do so. Of course, this suggestion does not apply to resolutions which should be copied fully. If the secretary cannot remember with requisite distinctness something transpiring at the meeting of sufficient importance to justify its being made a matter of record, and his memoranda are not sufficient to refresh his memory, he may call to his aid the presiding officer, or any one present in whom he has confidence.

Where the minutes have been recorded they should be authenticated. This is done simply by the proper signatures being attached thereto. Whether the signature of the secretary alone is sufficient, or that of the person who presided at the meeting should also be attached, depends upon the by-law provisions on the subject. In the absence of any provision on the subject, that of the secretary alone will suffice.

It is never necessary that the minutes actually be kept or that

they be recorded personally by the secretary. All except the act of signing may be done by an assistant or by any one specially employed. But the secretary, by accepting and occupying the office, undertakes that they shall be properly kept, and that they shall speak the truth.

Minutes are usually read and approved at a subsequent meeting, but there is no legal reason for not approving them at the same meeting. Upon their being approved, and the minutes of the meeting at which they were approved being recorded, the secretary should make an entry below his signature of the fact of their having been approved, thus: "Approved January 26, 1927, page 63."

The arrival of a member subsequent to the opening of the meeting should be noted in the list of members and also in the minutes, the latter entry being in the following form: "Here Mr. Robt. Ainslie arrived and participated in subsequent proceedings."

A model set of minutes showing the various acts done in organizing a corporation is shown in another part of this book.¹

The following general form of minutes for the first meeting can be adapted to any conditions or circumstances:

§ 738. Minutes of First Meeting of Stockholders.

New Era Printing Company.

Held March 1, 1927.

Pursuant to notice (or call and waiver of notice), the stockholders of the New Era Printing Company held their first meeting at room 15, No. 50 Printing House Square, Washington, D. C., on the 1st day of March, 1927. Present and absent as follows:

(Here insert list as second form in Sec. 736.)

Mr. James Willard was chosen to preside, and called the meeting to order, and thereupon, by unanimous consent, J. F. Weston was, by the chair, appointed secretary of the meeting.

All the proxies held by persons present were filed with the secretary, and were by him examined and found to be in due form and the signatures were found to be genuine.

The secretary then presented a copy of the notice (or call and waiver), pursuant to which the meeting was held. Said notice (or call and waiver) was ordered to be spread upon the minutes, and is as follows:

(Here insert either the notice or call and waiver, according to the fact.)

A certified copy of the articles of incorporation (or charter) of the com-

¹ See sec. 105, ante.

pany was presented by the chair, with a statement that all the requirements of law with respect to recording the same and filing a certified copy had been complied with. It was ordered that said certified copy be entered on the first pages of the minute book, to precede the entry of any minutes.

A draft of a code of by-laws which had been previously prepared was then submitted to the meeting by the chair, and after being considered article by article, section by section, and as a whole, was adopted (or was amended and adopted), as the by-laws of the corporation, and ordered to be spread upon the minutes, and entered in a book of by-laws, to be procured and used by the secretary for that purpose.

Said by-laws are as follows:

(Here insert them at length.)

The next order of business being the election of a board of five directors, the election was proceeded with, a vote by ballot being taken, conducted by H. L. Brown and James Knox, inspectors, which resulted as follows:

E. P. Jones.....	510 votes
John Gordon	600 votes
James Willard	610 votes
Asa Roberts	700 votes
M. L. Bennett.....	535 votes
H. L. Brown.....	385 votes
James Knox	435 votes
Robt. Ainslie	100 votes

The chair thereupon declared that E. P. Jones, James Willard, Asa Roberts, John Gordon, and M. L. Bennett had each received a majority of all the votes cast, and were the persons receiving the highest vote and were the duly elected directors for the next ensuing year.

There being no further business before the meeting, an adjournment was taken sine die.

Attest:

JAMES WILLARD,
Chairman.

J. F. WESTON,
Secretary.

§ 739. Minutes of Other Than First Meeting.—There is a general similarity in the forms in which minutes of all stockholders' meetings are made up. Several exemplars follow:

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS.

New Era Printing Company.

Held May 15, 1927.

Pursuant to notice (or call and waiver of notice), a special meeting of the stockholders of the New Era Printing Company was held at the office of said corporation, at No. 50 Printing House Square, in the city of Washington, D. C., at 10 o'clock a. m., on the 15th day of May, 1927.

The meeting was called to order by the president, J. F. Weston, the secretary also being present and acting as secretary of the meeting.

Stockholders were present and absent as follows:

(Here insert list.)

The call and notice of the meeting or call and waiver of notice) were ordered to be entered in the minutes, and are as follows:

(Insert as per the copy on file.)

The purposes of the meeting were then stated by the chair as set forth in the call, etc., etc.

Upon motion, the meeting adjourned until the following Wednesday, May 18, 1927, at 10 o'clock a. m., in order that the stockholders might have further time to consider the question.

Attest:

JAMES WILLARD,
President.
J. F. WESTON,
Secretary.

§ 740. Minutes of Adjourned Meeting of Stockholders.

New Era Printing Company.

Held May 18, 1927.

Pursuant to adjournment, the special meeting of stockholders of the New Era Printing Company convened at the office of the company, to wit, No. 50 Printing House Square, at 10 o'clock a. m., on the 18th day of May, 1927.

Stockholders were present in person or by proxy, and absent as follows:

(Here insert.)

The minutes of the preceding meeting, of which this meeting was the continuance, were read and approved, etc.

(Then insert the proceedings upon the proposition under consideration.)

There being no further business, an adjournment sine die was taken.

Attest:

JAMES WILLARD,
President.
J. F. WESTON,
Secretary.

§ 741. Minutes of Annual Meeting of Stockholders.

New Era Printing Company.

Held June 15, 1927.

The stockholders of the New Era Printing Company assembled in annual meeting in the office of the company, No. 50 Printing House Square, on January 15, 1927, at 10 o'clock a. m.

President Willard called the meeting to order, and presided during its deliberations, and J. F. Weston, secretary of the company, acted as secretary of the meeting.

The roll of stockholders was called, and there was found to be present and absent as follows:

(Here insert according to the facts.)

The secretary produced and submitted to the meeting the personal notice of the meeting, certified by him to the effect that copies of the same had been mailed to each and every stockholder on the 4th day of June, 1927; also copies of the "Washington Post," dated respectively, June 6 and 13, 1927, containing notices of the meeting in the usual form. The certified notice and published notice were ordered filed.

The following resolution was unanimously adopted:

Resolved, That due and legal notice has been given of this meeting and the secretary instructed to so record upon the minutes.

The minutes of the last annual meeting and a special meeting, held May 15, 1927, and of an adjourned meeting, held May 18, 1927, were read and approved, or (in lieu of approval), corrected in the following particulars (state). As so corrected, said minutes were then approved.

The annual report of the president was then submitted and read, and ordered filed.

The annual report of the treasurer was submitted, read and filed.

(Here mention reports, if any, of standing and special committees.)

The election of directors for the ensuing year being next in order, the president appointed Henry L. Brown and Robert Ainslie as inspectors of the election; whereupon a vote was had by ballot. (Here insert according to the facts.)

There being no further business, the president declared the meeting adjourned sine die.

Attest:

JAMES WILLARD,
President.
J. F. WESTON,
Secretary.

§ 742. Meetings of the Board of Directors.—The duties of the secretary in connection with the meetings of the board of directors are similar in scope to those at meetings of the stockholders but are not nearly so onerous or complicated. The ascertainment of the presence of a quorum is not difficult, and the transaction of business by such a small body is readily followed and noted by the secretary. The directors usually hold a meeting immediately after adjournment of the stockholders' meeting. Unless a call and waiver be executed, the secretary of the stockholders' meeting should give the newly elected directors immediate notice of their election. It is then their duty to meet and organize by the election of officers.

§ 743. **Order of Business for Directors' Meeting.**—The order of business for meetings of the board of directors will be briefer than for a stockholders' meeting, and may be as follows:

ORDER OF BUSINESS FOR ORDINARY DIRECTORS' MEETING.

1. Reading and approval of minutes.
2. Reports.
3. Unfinished business.
4. New business.
5. Adjournment.

ORDER OF BUSINESS FOR FIRST ANNUAL DIRECTORS' MEETING.

1. Reading and approval of minutes.
2. Reports.
3. Election of officers.
4. Unfinished business.
5. New business.
6. Adjournment.

§ 744. **Minutes of Meeting of Board of Directors.**—As to the length of the minutes of the first meeting of the board of directors, much will depend upon the character of the corporation as well as the nature and condition of the business. In the case of a corporation formed merely to continue an established business, little more may be necessary than the election of corporate officers. In the case of a newly formed corporation, whose operations are to be extensive, for instance, to engage in manufacturing on a large scale, or to build a railroad, it may be found necessary to hold sessions from day to day and transact a large volume and variety of business. The following forms fulfill ordinary requirements:

MINUTES OF THE FIRST MEETING OF DIRECTORS.

New Era Printing Company.

Held March 8, 1927.

Pursuant to notice (or call and waiver of notice) the board of directors of the New Era Printing Company, elected at the annual meeting of stockholders March 1, 1927, assembled and held its first meeting in room 15 at No. 50 Printing House Square, in the city of Washington, D. C., at 10 o'clock a. m., on the 8th day of March, 1927.

Mr. James Willard was selected to temporarily preside and Mr. J. F. Walton was appointed as temporary secretary of the meeting. E. P. Jones, M. L. Bennett, James Willard, John Gordon, and Asa Roberts, being all said directors, were present.

The secretary presented the notice (or call and waiver of notice) pursuant to which the meeting was held. It was ordered to be entered at

length in the minutes, and is as follows: (Here insert the notice or call and waiver, according to the fact.) The election of officers for the corporation for the next ensuing year was then proceeded with and resulted as follows:

For president, James Willard received 4 votes.

For vice president, John Gordon received 4 votes.

For secretary, J. F. Weston received 5 votes.

For treasurer, James Knox received 5 votes.

And each and all were declared the duly elected officers as voted for. The permanent officers so elected assumed the duties of the offices to which they were thus elected and proceeded with the business of the meeting.

Upon motion, duly seconded, the secretary was then authorized and directed to purchase for the use of the corporation the following books:

(Here insert same.)

It was moved and seconded that the treasurer be authorized and directed to open an account with the Safety and Security Bank of Washington, D. C.; that all the funds of this company be deposited therein in the name of this corporation as the same shall come to his hands; such funds to be withdrawn only by check signed and countersigned as provided in the by-laws.

Upon motion, the president and secretary were authorized and directed to lease a suitable office and principal place of business for this corporation, at a rental not exceeding \$50 per month; also, to attend to the filing in the proper offices all documents required by law to be filed in state and county and district offices; also, to attend to the payment of the expenses incurred in the incorporation and organization of the company to this date; also to purchase any and all supplies and materials necessary to start the business for which this corporation was formed, and employ, and fix the salaries of all necessary agents and employees.

James Knox, the treasurer, presented his official bond in conformity with the provisions of the by-laws, which was examined by the board, approved and delivered to the secretary.

There being no other business the meeting adjourned.

JAMES WILLARD, President.

Attest:

J. F. WESTON, Secretary.

It is not necessary to state who was present and who absent or even that a quorum was present at an adjourned meeting. In the absence of anything in the minutes showing the contrary, the law will presume that those present at the previous meeting from which an adjournment was taken, continued in attendance. Moreover, in view of the personal liability of the directors for certain transactions of the board, the secretary, for their protection, should be particular to note their absence from particular meetings or at particular stages of meetings and the non-participation

in or formal dissent from each transaction by directors. The following forms will prove useful to secretaries in writing up the minutes of special meetings:

§ 745. Minutes of Special Meeting of Board of Directors.

New Era Printing Company.

Held May 24, 1927.

The board of directors met pursuant to notice to each and every member of the board (or call and waiver of notice, or by unanimous consent, all being present, according to fact) in special meeting in the office of the company, No. 50 Printing House Square, in the city of Washington, D. C.

The meeting being called to order by President Willard, Directors Jones, Bennett, Willard, Roberts, and Gordon answered present, being all the members of the board.

The secretary then presented the notice of the meeting (or call and waiver, or written consent, according to the fact) pursuant to which the meeting was held. There being no objection it was ordered to be entered in the minutes.

(Here insert same.)

The attention of the board was then called by the president to the purposes for which the meeting was held.

(Here insert proceedings as taken.)

There being no further business the president directed the meeting adjourned sine die.

Or

Further time being required for consideration an adjournment was taken to the following day at 10 o'clock a. m., at the same place.

Attest:

J. F. WESTON, Secretary.

JAMES WILLARD, President.

§ 746. Minutes of Regular Monthly Meeting of Directors.

New Era Printing Company.

Held April 15, 1927.

The board of directors of the New Era Printing Company met at the office of the company, No. 50 Printing House Square, on the 15th day of April, 1927. The meeting was called to order by President Willard, who presided during the meeting, J. F. Weston, the secretary, acting as such.

There were present Directors Jones, Bennett, Willard, and Gordon; absent Roberts. (The balance of the minutes will be in the same form as at a special meeting. See preceding form.)

§ 747. Minutes of a Regular Meeting of Directors, Showing Correction of Error and Re-levy of Assessment.

Office Pernau Land and Water Company,

March 15, 1927.

The board of directors of the Pernau Land and Water Company held their regular monthly meeting on the above date, Vice President C. L. Henry, in the absence of the president, calling the board to order. Upon roll call the following directors answered to their names: Simpson, Coggsell, Barnes, Henry, and Johnson. Absent: Sprague, Jones, Tanner, and Judson.

Minutes of the last regular meeting of the board read and approved as read. On motion of Director Simpson, seconded by Director Barnes, the following resolution was duly adopted:

"Resolved, That, Whereas, by inadvertence, certain errors occurred in the action of the board of directors of this corporation at its last regular meeting held on February 14, 1927, in the levying of an assessment upon the subscribed capital stock of this corporation, and whereas, by inadvertence, the notice of the levying of said assessment was not published as required by law, it is therefore hereby ordered that the action of the board of directors of this corporation, in the matter of the levying of said assessment, be and the same is hereby rescinded, and the action of the secretary of this corporation in the matter of the publication of said notice of assessment be and the same is hereby annulled."

On motion of Director Barnes, seconded by Director Johnson, the following order was duly passed and ordered entered on record, to wit:

"It is hereby ordered that an assessment, No. 1, of \$10 per share, lawful money of the United States, be and the same is hereby levied upon the subscribed capital stock of this corporation, payable on the 20th day of June, to the treasurer of said corporation, at his office, No. Street, in the city of, State of, and that any stock upon which this assessment shall remain unpaid on the 20th day of August, 1927, shall be delinquent, and unless payment is made before, the same will be sold on the 31st day of August, 1927, to pay the delinquent assessment, together with costs of advertising and expenses of sale."

On motion of Director Henry, seconded by Director Coggsell, it was resolved that the secretary of this corporation be and he is hereby instructed to give notice of the levying of the above assessment, as required by the statutes of this state, and thereafter if said assessment or any part thereof shall be delinquent, to give delinquent notice thereof, as required by the statutes of this state. There being no further business the meeting adjourned.

....., Secretary.

§ 748. Certified Copies of the Records.—Instances arise where a knowledge of the exact form of an entry of minutes, as well

as satisfactory evidence that such entries exist, is often desired. The minute book itself is, of course, the best evidence, and, in judicial proceedings, must be produced, if insisted upon. But in the transaction of ordinary business, a copy of the particular entry or entries will be sufficient; and, often, by agreement of counsel, certified copies are received in order to avoid the inconvenience and expense of bringing the secretary and his minute book into court. Certified copies of by-law provisions and resolutions may be required and furnished in the same way. If only one part of the minutes of a particular meeting is called for, there should be at least enough else to show that the minutes of which it purports to form a part are those of a meeting properly held. The following forms of certified minutes, resolutions and by-law provision are self-explanatory:

§ 749. Certified Copy From Minutes.

Certified copy of extract from the minutes of the annual stockholders' meeting of the New Era Printing Company.

Held March 1, 1927.

(Here insert the portion of the minutes showing that the meeting was properly organized, and that proper notice was given, and follow it with the record of the particular transaction in question.)

I hereby certify that I am the duly elected, qualified and acting secretary of the New Era Printing Company; that the above is a true and correct copy of an extract from the minutes of the proceedings held at the annual stockholders' meeting of said corporation, held in the office of the company on the 1st day of March, 1927, at 10 o'clock a. m.

In Witness Whereof, I have hereunto affixed my signature and the seal of said corporation, at the city of Washington, D. C., on this the 6th day of March, 1927.

(Corporate Seal.)

J. F. WESTON,
Secretary.

CERTIFIED COPY OF RESOLUTION.

Certified copy of a resolution adopted at the annual meeting of the stockholders of the New Era Printing Company, a corporation, on the 1st day of March, 1927.

(Here insert the resolution.)

I hereby certify that I am the duly elected, qualified and acting secretary of the above named corporation; and that the above is a true and correct copy of a resolution adopted at the annual meeting of the stockholders of said company, held on the 1st day of March, 1927, at 10 o'clock a. m., in the office of said company at No. 50 Printing House Square, city

of Washington, D. C., that the same has been duly recorded in the minutes of said corporation and has never been rescinded or revoked.

In Witness Whereof, I have hereunto signed my name
and affixed the seal of said corporation at Wash-
ington, D. C., this March 10, 1927.

(Corporate Seal.)

J. F. WESTON,
Secretary.

§ 750. Certified Copy of By-Law.

Certified copy of by-law of the New Era Printing Company:

Article

Proxies.

Section

(Here insert the section governing proxy voting and the certificate adapted from the foregoing forms.)

Sometimes the secretary's affidavit to the correctness of the copy will be required, and may be as follows:

§ 751. Affidavit by Secretary as to Correctness of Copy of Records.

District of Columbia, City of Washington, ss.

On this the 10th day of March, 1927, before me personally came J. F. Weston, and being by me first duly sworn, deposes and says: That he is the duly elected, qualified and acting secretary of the New Era Printing Company; that he attended and acted as secretary at the meeting of the stockholders of said corporation held in the office of said company on the 1st day of March, 1927; that he correctly recorded the proceedings of said meeting in the minute book of said corporation, and that the above and foregoing is a true and correct copy taken from the minutes so recorded.

J. F. WESTON, Secretary.

Subscribed and sworn to before me this the 10th day of
March, 1927.

(Notarial Seal.)

NEWTON WISHART,
Notary Public within and for
the District of Columbia.

CHAPTER XLII.

CORPORATE RECORDS

- § 752. Records of Corporation—In General.
- § 753. Records to Be Kept by Corporation.
- § 754. The Book of By-Laws.
- § 755. The Minute Book.
- § 756. The Stock Certificate Book.
- § 757. The Stock Transfer Book.
- § 758. Assignment in Transfer Book.
- § 759. The Stock Journal.
- § 760. The Stock Ledger.
- § 761. Entries in Stock Ledger.
- § 762. Assessment Register.
- § 763. The Dividend Journal.
- § 764. The Coupon Register.
- § 765. General Accounts of Corporations.
- § 766. The Corporate Calendar.
- § 767. Restoration of Lost Corporate Records.

§ 752. **Records of Corporation—In General.**—Books and papers of a corporation are not public records in the sense that they relate to public transactions, or, in the absence of particular requirements are open to general inspection or must be kept or filed in a special manner. They have reference to business transacted for the benefit of the group of individuals whose association has the advantage of corporate organization.¹ The records of a private corporation, even as to those required to be kept by statute, are not in any sense public records.² They are not open to inspection by strangers.³ However, in some states, the by-laws are by an express provision of a statute open to public inspection.⁴

¹ *Wilson v. United States*, 221 U. S. 361, 31 S. C. R. 538, 55 L. Ed. 771, A. C. 1912D 558, 664. See secs. 768 et seq. as to right to inspect corporate records.

² *Lipscomb's Adm'r v. Condon*, 56 W. Va. 416, 49 S. E. 392, 107 A. S. R. 938, 67 L. R. A. 670.

³ *Stowe v. Hardey*, 241 U. S. 199, 36 S. C. R. 541, 60 L. Ed. 953; *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543, 99 A. D. 300.

⁴ California Civil Code, sec. 304; Idaho Comp. Stats. 1919, sec. 4710; Montana Rev. Codes 1921, sec. 5932; North Dakota Comp. Laws 1913, sec. 4537; Oklahoma Comp. Stats. 1921, sec. 5330; South Dakota Rev. Code 1919, sec. 8783.

§ 753. **Records to Be Kept by Corporation.**—In several states, there are statutory provisions requiring all corporations for profit to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full.⁵

§ 754. **The Book of By-Laws.**—The “book of by-laws,” and the keeping of which is required by the law of many states, should be kept by the secretary and all amendments properly noted therein by him. The book must be open to the inspection of the public during office hours each day except holidays.⁶ It is no defense that the corporation has no office, as the law requires that some such place must be maintained as its principal place of business.⁷

§ 755. **The Minute Book.**—Among the indispensable books of a corporation, and one usually required by law, is that in which a record of proceedings of membership meetings and the meetings of the board of directors is kept, commonly known as the Minute Book. This book, properly identified, is admissible in evidence to prove its contents, and establishes, in the absence of proof to the contrary, the facts therein noted. A book proper for the purpose may be procured of any extensive dealer in stationery. It should be so ruled as to leave a wide margin to the left for the insertion of

⁵ California Civil Code, sec. 377; Idaho Comp. Stats. 1919, sec. 4758; Montana Rev. Codes 1921, sec. 6008; Oklahoma Comp. Stats. 1921, sec. 5349.

⁶ California Civil Code, sec. 304; Idaho Comp. Stats. 1919, sec. 4710; Montana Rev. Codes 1921, sec. 5932; North Dakota Comp. Laws 1913, sec. 4537; Oklahoma Comp. Stats. 1921, sec. 5330; South Dakota Rev. Code 1919, sec. 8783.

⁷ Chapman v. Doray, 89 Cal. 52, 26 Pac. 605.

catch words indicating the subject matter considered, or acted upon, at that particular point of the proceedings. If necessary or convenient, two minute books may be kept, one for directors' meetings and another for meetings of stockholders or members. In the case of a corporation having frequent meetings at which much business is transacted, it would be better to keep two minute books, the size and number of pages to be determined by the probable volume of entries required to be made. The keeping of the minute book pertains to the office of the secretary, and except for use at meetings, or in court, or upon special occasions and for special reasons, should not be taken, or permitted to be taken, from his possession. It is essential to the well-being of the corporation that many matters should be therein recorded, and usually many other matters are noted there for convenience, merely.

In the first pages should be copied the certified copy of the articles of incorporation received from the secretary of state, or other authority. The practice sometimes adopted of pasting this document in the minute book is not to be commended. There is danger of its becoming detached and lost; besides, it is sometimes needed in court to prove corporate existence, and it should not then be necessary to take also the minute book. Another censurable practice is that of entering the by-laws in the minute book. The book of by-laws should be separate. The statutes of many of the states so require. There should be a heading for each meeting which should be at the top of a page, and should designate whether the meeting was regular or special, and its date. No blank pages should be left between the record of one meeting and that of a succeeding meeting. There is no legal objection to having the minutes copied with a typewriter and pasted into the book. And yet it is obvious that minutes so kept could be easily tampered with for fraudulent purposes. It will obviate all questions of this kind, provided the secretary is himself faithful, if the minutes are entered in a clear, legible hand, with pen and ink. The marginal references should be made with red ink, and the minute entries in ink of a different color.

A model set of minutes showing the various steps necessary in organizing a corporation are given in another part of this book.⁸

⁸ See sec. 105, ante.

§ 756. **The Stock Certificate Book.**—The stock certificates are usually kept in a book, the cover of which is open at both sides and at one end. In this, any desired number of blank certificates may be contained, ready to be filled out, according to name, date, and number of shares. The book is so bound as to admit of the retention of the stub end, containing the data as to the issue, thus constituting a complete current account of all such transactions. Each certificate and its stub contains, among the other matter, the serial number of the certificate, their numbers running consecutively. Between the portion of each leaf containing a certificate and that constituting the stub, is a line of perforations, thus facilitating their separation. If the certificate issued be in lieu of one surrendered in consequence of a transfer, that fact is entered on the stub, designating the number and holder of the certificate so surrendered, as well as the usual data as to the issuance of the new certificate. Certificates surrendered in consequence of a transfer, as well as when delivered up for cancellation for any other reason, should be stamped with the word "Canceled," and filed away for future reference. Where a book for the record of transfers is kept in addition to the stock certificate book—and this is the better method—the data just mentioned with reference to surrendered certificates need not be entered on the stubs, as the entire matter, including the occasion for issuing the certificate, will appear in the ledger.

If provision has been made in the by-laws for the issuance of preferred stock, the certificates for that are bound in a separate book, with its own separate serial numbering.

Sometimes the corporation desires to commence the issuance of its certificates before they are printed or engraved in satisfactory form and style. In that case temporary certificates or vouchers showing that the holders thereof are entitled to certificates of the corresponding date and number of shares may be used until the certificates in the permanent form are ready. If this course be pursued, the certificates in regular form should not be issued until those temporarily issued, or the vouchers are returned for cancellation. When the regular certificate book is received, enough blanks should be reserved at the beginning to fully represent such temporary issues. The data on the stubs of the temporary certificates should be transposed to the stubs of the regular, and the

holders of the former should be notified of the readiness of the corporation to make the exchange.

The process of issuing a certificate originally is somewhat different from that where there has been a transfer, or a surrender of outstanding certificates. There are ample blanks on the stub to cover any circumstances. Fewer of them are required to be filled in where the issue is original than when in lieu of one transferred or surrendered.

§ 757. The Stock Transfer Book.—In some states, there must be kept a book known as the “stock and transfer book,” which must contain a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom.⁹

For all legal purposes, the entries on the stubs in the certificate book are sufficient, and in a vast majority of corporations no separate transfer book is kept. Where, however, the holders of certificates are numerous, or the stock is actively dealt in, a separate transfer book is a great convenience, inasmuch as, without it, the secretary might, every time a transfer is made, have to search through a number of stub books in order to obtain a correct history of the stock so transferred.

The separate transfer book is also a more permanent record and better preserves the evidences of titles to stock. This book consists of printed transfers, identical with those seen on the back of the certificates bound together. When a certificate is surrendered and a new one, or more than one, demanded in lieu of it, the secretary requires its owner, if present, or, in his absence, the person designated on the back of it as his attorney (which, as has been shown, is usually the secretary himself), to sign the proper blank transfer or assignment in this book; and the secretary then fills in the blanks and makes in the margin the proper entries, to complete the history of the stock to date. The following is one of

⁹ California Civil Code, sec. 378; Idaho Comp. Stats. 1919, sec. 4759; Montana Rev. Codes 1921, sec. 6009; North Dakota Comp. Laws 1913, sec. 4560; Oklahoma Comp. Stats. 1921, sec. 5350. See, also, *Knowles v. Sand-ercock*, 107 Cal. 629, 40 Pac. 1047.

such assignments in the book, complete, with the entries made in the margin already made by the secretary:

§ 758. Assignment in Transfer Book.

Ledger Folio Transfer No.....
New Era Printing Company.

For value received I hereby sell, assign and transfer to Philo Sawyer of the county (or city) of, State of fifty shares of the capital stock of the above named corporation, the same standing at present in my name on the books of said company and represented by surrendered certificate No., this May 10, 1927.

New certificates, Nos. 48, 49.

Issued to Philo Sawyer, Ledger Fol. 78.

E. P. JONES,

By R. M. HALL, Attorney.

The shares represented by more than one certificate may be included in one such entry by properly filling in the blanks. The blank number of the transfer at the upper right hand corner may be printed when the book is made, the blanks being in consecutive order, consecutively numbered, or it may be left blank. There is this advantage in leaving it blank, that one or more may be spoiled, and in case the numbers are printed in, all subsequent numbers must be changed.

§ 759. **The Stock Journal.**—A stock journal may be kept in which may be noted each cancellation or issue of a certificate as it occurs, the entries being transferred to the ledger later. The following form illustrates such entries in the stock journal:

ENTRIES IN STOCK JOURNAL.

Date 1927	By Whom Surrendered	Certificate Canceled		
		Ledger Folio	No. Certificate	No. Shares
August 1	H. W. Miller.....	64	423	10
5	J. J. Knight.....	71	16	25
6	R. J. Grady.....	56	214	225
6	R. J. Iverson.....	56	215	50
6	R. J. Goldman.....	56	227	22
Date	In Whose Favor	Certificate Issued		
		Ledger Folio	No. Certificate	No. Shares
August 4	R. W. Collins.....	24	916	10
8	T. M. Newman.....	31	917	25
9	R. K. Lilienthal.....	46	918	225
9	R. Tweedsdale	84	919	50
9	S. S. Thomson.....	109	920	22

§ 760. The Stock Ledger.—In addition to the stock books above described, there may be others required by the statutes. There may be very conveniently and properly kept by those corporations, the magnitude of whose stock transactions justify it, a book known as the stock ledger, which has the same relation to the stock transfer book that a ledger holds to the journal in ordinary bookkeeping. This ledger should contain the stock account of each individual stockholder and should, like any other ledger, contain an index, alphabetically arranged. It is properly made up from the entries in the two books previously mentioned. When a person becomes the owner of stock, an account should be opened in the ledger in his name, and he should be credited with the stock owned. When he parts with part of it, he is debited therewith. When he parts with all of it, the account balances and is closed. The ledger is the most convenient book for use at elections and in the disbursement of dividends. It should be devoted exclusively to the one purpose, and neither the dividend nor the assessment account should appear therein. The following is a form of an individual account in the ledger, and may be useful as a suggestion to secretaries and other keepers of corporation books:

§ 761. Entries in Stock Ledger.

JOHN DOE.

Certificate Canceled			
Date 1926	Journal Folio	Certificate Number	No. of Shares
February 1.....	8	26	1000
6.....	12	141	5000
May 1.....	34	17	250
Certificate Issued			
Date 1926	Journal Folio	Certificate Number	No. of Shares
January 2.....	1	17	250
5.....	1	26	1000
February 6.....	12	141	5000
18.....	14	206	265
18.....	14	207	4735

It is not necessary under such laws that the name "stock and transfer book" shall be given to any particular record. It is sufficient that a book corresponding to that provided for by the law shall be kept.¹⁰

¹⁰ Knowles v. Sanderecock, 107 Cal. 629, 40 Pac. 1047.

§ 762. **Assessment Register.**—A separate record should be kept of all assessments levied. A book for this purpose should be so ruled off that there may be noted the date of the levy, the amount, when noticed, when delinquent, when the notice of delinquency was published, when, by whom, and the amount paid, a list of the delinquents, etc.

§ 763. **The Dividend Journal.**—Especially where dividends are declared at stated periods, a separate account may conveniently be kept of their payment. The stockholders' names may be arranged alphabetically, followed by the addresses and spaces in which to note the amount of the dividend, the number of shares belonging to each person and the amount due him. By the use of folding leaves, one list of names may be made to serve for a year or longer.

§ 764. **The Coupon Register.**—A corporation which has issued bonds should provide itself with a book in which it may keep a separate record of the payment and return of all of the coupons attached to each bond. A separate page should be provided for each bond, spaces being arranged in numerical order for the pasting of the corresponding returned coupons.

§ 765. **General Accounts of Corporations.**—In the great public service, insurance, etc., companies, the bookkeeping is itself an enterprise of great magnitude, is a department of great importance, consists of many books designed specially for the affairs of the particular company, and may include books and systems of keeping them, unknown to the established science of bookkeeping. Each corporation must devise a system of keeping its accounts with its customers adapted to its particular conditions. For an article relating to corporate accounting, see another part of this book.¹¹

§ 766. **The Corporate Calendar.**—The corporate calendar is an affair of comparatively little importance, with small and "close" corporations, under no statutory obligations to make reports to state officers or to make publication of financial condi-

¹¹ See secs. 1035 et seq.

tion and the like. And yet few corporations making any pretensions to do business are so insignificant that a schedule of things of strictly corporate concern, to be done according to law at particular future dates, will not be found a wise safeguard against neglect and possible loss. Such schedule is called a "corporate calendar," and consists of memoranda of things to be done and the dates when they are required to be done, arranged in chronological order. It may be kept in a separate book devoted to that purpose exclusively, it may be made out on a card and placed on or over the secretary's desk, or it may be in the form of memoranda under the dates on an ordinary calendar such as those in general use, so that in the transaction of routine business it will serve as a constant reminder. The skeleton calendar found below is a suggestion merely, and before attempting to prepare a calendar, the statutes of the particular state should be consulted, in order to ascertain what duties are imposed upon the particular class of corporations at particular dates.

CORPORATE CALENDAR.

1927.

Jan. 2. Franchise (or other) state tax payable. Must be paid before day of Amount to be paid has been fixed at \$.....

Jan. 5. Send out and publish notices of annual meeting to be held Jan. 15th.

Jan. 12. Endeavor to obtain call and waiver of notice for January meeting board of directors.

Jan. 14. Notice to be given of January meeting of board of directors to be held January, if not waived.

Jan. 15. Annual meeting of stockholders at 10 o'clock a. m. Prepare rough minutes on sheets, blank tally sheets, oaths of inspectors, certificates, etc.

Jan. 15. Annual reports to state and to county, due on this date, and must be made before the end of the month. Find time to prepare it immediately after annual meeting.

Jan. 16. Meeting of board of directors at 10 o'clock a. m.

Feb. 10. Notice to directors (or call and waiver) of notice for meeting February 15th.

Feb. 15. Meeting of board of directors, 10 a. m.

Mar. 1. City (or county) assessment due between this date and the 15th of March. If not satisfactory when received, application for correction must be made to the board of equalization at its April meeting.

Mar. 11. Notice to directors (or call and waiver of notice) for meeting Mar. 16th.

Mar. 16. Board meeting, 10 a. m.

Apr. 3. Meeting of board of equalization of assessments.

If this company has any grievance consult attorney.

Apply to clerk of the board for all blanks needed.

All other matters, such as date of payment of taxes, date of delinquency, penalties for non-payment, etc., may be entered.

Apr. 10. Notice (or call and waiver) of board meeting on 15th.

Apr. 15. Board meets at 10 o'clock a. m.

May 10. Notice, etc., of directors' meeting.

May 15. Meeting of board at 10 a. m.

(Same for each month.)

§ 767. Restoration of Lost Corporate Records.—Most states have statutes under which corporate records lost or destroyed may be restored with as full effect as the originals. Usually some judicial procedure is provided for in which notice is published, and all interested parties, as nearly as practicable, given an opportunity to assist in or object to the restoration of the lost or destroyed records.¹²

¹² California Civil Code, sec. 365.

CHAPTER XLIII.

INSPECTION OF CORPORATE RECORDS.

- § 768. In General.
- § 769. Motive or Purpose of Inspection.
- § 770. Who May Exercise Right of Inspection and by Whom Made.
- § 771. Demand and Refusal of Inspection of Corporate Records.
- § 772. Time and Place of Inspection.
- § 773. Corporations Subject to Inspection.
- § 774. Enforcement of Right by Mandamus.
- § 775. Statutory Penalty Where Officer of Corporation Refuses Inspection.

§ 768. **In General.**—Stockholders as owners of the corporation, for a proper purpose, are entitled to reliable information as to its condition and affairs and the manner of conducting its business, and, to secure such information, they are entitled, at common law, to inspect the books and records of the corporation containing such information.¹ In most states, the right of stockholders to inspect the books of a corporation has been secured by statute,² and in some cases the right has been made the subject of constitutional provision.³

Under such a constitutional provision, it would appear that a statute providing that "the board of directors may, by unanimous vote, deny such examination or inspection to a stockholder who demands the same with intent to use to the injury of the corporation the information to be acquired thereby,"⁴ is unconstitu-

¹ *Guthrie v. Harkness*, 199 U. S. 148, 26 S. C. R. 4, 50 L. Ed. 130, 4 A. C. 433; *Mushet v. Department of Public Service*, 35 Cal. App. 630, 170 Pac. 653; *Cummings ex rel. Elliott v. Lake Torpedo Boat Co.*, 90 Conn. 638, 98 Atl. 580, L. R. A. 1916F 1033; *State ex rel. Liniham v. United Brokerage Co.*, 6 Boyce (29 Del.) 570, 101 Atl. 433; *Leach v. Davy*, 199 Mich. 378, 165 N. W. 927.

² California Civil Code, sec. 377; Idaho Comp. Stats. 1919, sec. 4758; Montana Rev. Codes 1921, sec. 6008; Oklahoma Comp. Stats. 1921, sec. 5349; *Hobbs v. Tom Reed Gold Min. Co.*, 164 Cal. 497, 43 L. R. A. (N. S.) 1112, 129 Pac. 781.

³ California Constitution, article XII, sec. 14; Louisiana Constitution 1898, article 273; *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156; *State v. New Orleans Gas Light Co.*, 49 La. Ann. 1556, 22 So. 815.

⁴ California Civil Code, sec. 377.

tional, since the legislature cannot lawfully place it in the discretion of the directors to determine when and at what time, or if at all, the books and papers of the corporation may be inspected by stockholders.⁵ The practical effect of such a limitation is to defeat the constitutional right of a stockholder to inspect the books of the corporation in which he is financially interested. The determination of the exercise in extent of that right is taken from the court and delegated to the discretion of the very men whose conduct in carrying on the business the stockholder properly desires to investigate.⁶ The clear legal right given by the constitution cannot be defeated by inquiry into the motives.⁷ The only qualification of a stockholder's right to such an examination is that it shall be exercised at reasonable times.⁸

§ 769. Motive or Purpose of Inspection.—The common law right of a stockholder to inspect the books and records of the corporation is not absolute, but is dependent upon his motive being to use the information for some proper and legitimate object, germane to his interest as a stockholder. The right will not be enforced by courts for speculative purposes or to gratify idle curiosity when the interests of the stockholders and their protection are not involved.⁹ However, at the present time, in most jurisdictions, there are express provisions of law securing to stockholders of corporations the right to inspect the books and records of the corporation generally, or certain specified books. Apart from the question of remedy, and as a matter of substantive law, it is undoubtedly the rule established by the great weight of authority that the right of inspection so conferred is absolute and unquali-

⁵ *Commonwealth ex rel. Wilde v. Pennsylvania Silk Co.*, 267 Pa. 331, 110 Atl. 157. See, also, *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156.

⁶ *Klotz v. Pan-American Match Co.*, 221 Mass. 38, 108 N. E. 764, A. C. 1917D 895.

⁷ *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156.

⁸ *Wilson v. Mackinaw State Bank*, 217 Ill. App. 494; *Palmer v. Diel*, 233 Ill. App. 508.

⁹ *Bruning v. Hoboken Printing & Pub. Co.*, 67 N. J. Law 119, 50 Atl. 906; *Lyon v. American Screw Co.*, 16 R. I. 472, 17 Atl. 61; *Commonwealth v. Empire Pass. Ry. Co.*, 134 Pa. 237, 19 Atl. 629; *Otis-Hidden Co. v. Scheirich*, 187 Ky. 423, 219 S. W. 191, 22 A. L. R. 19; *State v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 82 N. W. 354, 22 A. L. R. 1.

fied, except so far as it is limited by the terms of the statutory or constitutional provision itself.¹⁰

The mere fact that inconvenience will result to the company from an inspection of its books is no ground for a denial of the stockholder's right.¹¹ Nor will the fact that a stockholder bears unfriendly relations toward the officers of the company justify a denial of his right to examine its books.¹²

By the modern view where the right of inspection is conferred by statute absolute in terms, the application cannot be denied on the ground of improper motive, because a clear legal right created by statute cannot be defeated by showing an improper motive.¹³

§ 770. Who May Exercise Right of Inspection and by Whom Made.—A holder of stock in a corporation has a right to know how the affairs of the corporation are conducted, and whether the capital of which he has contributed a share is being prudently and profitably employed, and to inspect the books of the corporation for the purpose of obtaining such knowledge.¹⁴ However, the books of a corporation are not open to the inspection of persons without interest therein, or to unreasonable inspection by persons who are interested.¹⁵

¹⁰ *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156; *Wire v. Fisher*, 66 Colo. 545, 185 Pac. 469; *Henry v. Babcock & Wilcox Co.*, 196 N. Y. 302, 89 N. E. 942, 134 A. S. R. 835; *Cincinnati Volksblatt Co. v. Hoffmeister*, 62 Ohio 189, 56 N. E. 1033, 78 A. S. R. 707, 48 L. R. A. 732; *State ex rel. Dempsey v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 182 N. W. 354, 22 A. L. R. 1.

¹¹ *State v. St. Louis & S. F. Ry. Co.*, 29 Mo. App. 301.

¹² *Ellsworth v. Dorwart*, 95 Iowa 108, 63 N. W. 588, 58 A. S. R. 427; *Cobb v. Lagarde*, 129 Ala. 488, 30 So. 326.

¹³ *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156; *Venner v. Chicago City R. Co.*, 246 Ill. 170, 92 N. E. 643, 138 A. S. R. 229, 20 A. C. 607; *Kimball v. Dern*, 39 Utah 181, 116 Pac. 28, A. C. 1913E 166, 35 L. R. A. (N. S.) 134; *State v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 182 N. W. 354, 22 A. L. R. 1; *State v. Malleable Iron Range Co.*, 177 Wis. 582, 187 N. W. 646, 22 A. L. R. 5.

¹⁴ *State v. Lake Torpedo Boat Co.*, 90 Conn. 638, 98 Atl. 580, L. R. A. 1916F 1033; *Powelson v. Tennessee Eastern Electric Co.*, 220 Mass. 380, 107 N. E. 997, A. C. 1917A 102; *Klotz v. Pan-American Match Co.*, 221 Mass. 38, 108 N. E. 764, A. C. 1917D 895; *State v. Malleable Iron Range Co.*, 177 Wis. 582, 187 N. W. 646, 22 A. L. R. 5.

¹⁵ *State ex rel. Watkins v. North American Land & Timber Co.*, 106 La. 621, 31 So. 172, 87 A. S. R. 309.

Although the statute restricts the right to inspect corporate books to *bona fide* stockholders, one may be a *bona fide* stockholder without having any beneficial interest in the shares. Thus, a stockholder who holds stock merely to qualify as a director is a *bona fide* stockholder and has a right to inspect corporate records as such.¹⁶ The fact that the stockholder has not paid for his stock does not preclude him from exercising his statutory right to inspect the books of the corporation.¹⁷ The rule permitting inspection applies alike to the holder of only a few shares of stock and to the holder of a large number.¹⁸ Although a stockholder holds the stock in trust for others, nevertheless, since such stockholder is liable to pay assessment, and is liable to creditors for a proportionate share of the debts of the corporation, he is entitled to an inspection and examination of its books and business.¹⁹ The personal representative of an estate having stock in the corporation is entitled to maintain proceedings for inspection of the books and records of the corporation.²⁰ Where by statute the pledgor of stock is liable to creditors as a stockholder, he is entitled to inspect the books of the corporation.¹ The right of inspection has been denied to pledgees of stock.² The right to inspect the books of a corporation is very generally held to include the right to have the assistance of an attorney, accountant, or stenographer, if the stockholder desires such assistance.³ It amounts to a denial of the right to inspect for the officers of a corporation to refuse to permit a stockholder to designate his own agent or attorney to

¹⁶ Webster v. Bartlett Estate Co., 35 Cal. App. 283, 169 Pac. 702.

¹⁷ State ex rel. Anderson v. Frederickson, 133 Wash. 28, 233 Pac. 291.

¹⁸ Richmond v. Hill, 148 Ill. App. 179.

¹⁹ Webster v. Bartlett Estate Co., 35 Cal. App. 283, 169 Pac. 702.

²⁰ Re Kennedy, 75 App. Div. 188, 77 N. Y. Supp. 714; Feick v. Hill Bread Co., 91 N. J. Law 486, 103 Atl. 813; State ex rel. Burke v. Citizens' Bank, 51 La. Ann. 426, 25 So. 318.

¹ Booth v. Consolidated Fruit Jar Co., 62 Misc. Rep. 252, 114 N. Y. Supp. 1000.

² Re First Nat. Bank, 44 App. Div. 635, 60 N. Y. Supp. 1138 (Memo.).

³ Foster v. White, 86 Ala. 467, 6 So. 88; Merchant's Broom Co. v. Butler, 70 Fla. 397, 70 So. 383; People ex rel. Bajohr v. Weber Co., 159 Ill. App. 588; Bryer v. Wyman, 118 Me. 378, 108 Atl. 331; Shea v. Parker, 234 Mass. 592, 126 N. E. 47; re Wygant, 101 Misc. Rep. 509, 167 N. Y. Supp. 369; Clawson v. Clayton, 33 Utah 266, 93 Pac. 729; Szeman v. Capitol Theater (N. J. Law), 127 Atl. 325.

make the inspection.⁴ The corporation cannot dictate to the stockholder as to whom he shall employ to assist him in inspecting the books. Nor can it refuse to submit its books for inspection on the ground that the attorney employed to aid the stockholder has made threats against it, and charged its manager and directors with fraud.⁵ However, it would seem, at least in some jurisdictions, that the court may exercise some discretion in appointing a stranger to assist a stockholder in making an inspection of the books and records of the corporation.⁶

As an incident of the right of a stockholder to inspect the records and books of the corporation, he has also the right to make extracts therefrom; at least to the extent that such excerpts or minutes cover matters in which he is properly interested.⁷

§ 771. Demand and Refusal of Inspection of Corporate Records.—Generally speaking, a stockholder cannot enlist the aid of the courts to enforce his right to inspect the books of the corporation, unless he has first made a demand for an opportunity of inspection and has met with a denial of or obstruction to his right.⁸ When the right of inspection is conferred by statute in absolute terms, the purpose or motive of the stockholder in making the demand for an inspection is not material, and he is not required to state his reasons therefor.⁹ When a stockholder has made repeated demands for an examination of the stock book of a foreign corporation, a denial of his right is established where those in charge of the office have met his demands with evasive answers for a

⁴ *Pfirman v. Success Min. Co.*, 30 Idaho 468, 166 Pac. 216.

⁵ *Commonwealth ex rel. Wilde v. Pennsylvania Silk Co.*, 267 Pa. 331, 110 Atl. 157.

⁶ *State ex rel. Aultman v. Ice*, 75 W. Va. 476, 84 S. E. 181, L. R. A. 1915D 288; *re De Vengoechea*, 86 N. J. Law 35, 91 Atl. 314; *Lien v. Savings Loan & T. Co.*, 43 N. D. 260, 174 N. W. 621.

⁷ *Wire v. Fisher*, 66 Colo. 545, 185 Pac. 469; *Swift v. State*, 7 Houst. (Del.) 338, 6 Atl. 856, 32 Atl. 143, 40 A. S. R. 127; *White v. Manter*, 109 Me. 408, 84 Atl. 890, 42 L. R. A. (N. S.) 332; *Shea v. Parker*, 234 Mass. 592, 126 N. E. 47.

⁸ *Coquard v. National Linseed Oil Co.*, 171 Ill. 480, 49 N. E. 573.

⁹ *Foster v. White*, 86 Ala. 467, 6 So. 88; *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156; *White v. Manter*, 109 Me. 408, 42 L. R. A. (N. S.) 332, 84 Atl. 890; *Hub Construction Co. v. New England Breeders Club*, 74 N. H. 282, 67 Atl. 574.

month,¹⁰ since an indefinite delay in according the right of inspection is equivalent to a denial of it.¹¹ A refusal to permit an inspection of any of the books of the corporation cannot be justified upon the ground that the stockholder asked to inspect more than he was entitled to.¹² Where demand is made by an attorney for a stockholder, in his presence, for the inspection of the books of a corporation, it is sufficient.¹³ The demand may be made by a stockholder's authorized attorney.¹⁴ When a demand has been deposited in the postoffice it will be presumed to have reached its destination.¹⁵

§ 772. Time and Place of Inspection.—The common law right of inspection of corporate books may be exercised by a stockholder in such manner and at such times as will not needlessly annoy the corporate officials, or interfere with the conduct of the business of the corporation.¹⁶ The inspection should be made at such time or times, and under such conditions as not unduly to hinder and embarrass the company in the conduct and management of its business.¹⁷ The provisions of a statute that the inspection of the books of a corporation shall be at reasonable hours, means that the inspection shall be had within the business hours of the corporation.¹⁸

It is not unreasonable for a corporation to insist that the books remain at its office for inspection, and that the inspection be made at the place where the books are ordinarily kept.¹⁹

§ 773. Corporations Subject to Inspection.—Between the various classes of corporations in regard to the right of inspection

¹⁰ *People v. Montreal & B. Copper Co.*, 40 Misc. Rep. 282, 81 N. Y. Supp. 974.

¹¹ *Cobb v. Lagarde*, 129 Ala. 488, 30 So. 326.

¹² *Ellsworth v. Dorwart*, 95 Iowa 108, 63 N. W. 588, 58 A. S. R. 427.

¹³ *People v. Bowie*, 34 N. Y. Crim. Rep. 271, 166 N. Y. Supp. 905.

¹⁴ *Mitchell v. Rubber Reclaiming Co.* (N. J. Eq.), 24 Atl. 407.

¹⁵ *Neubert v. Armstrong Water Co.*, 211 Pa. 582, 61 Atl. 123.

¹⁶ *State ex rel. Watkins v. Donnell Mfg. Co.*, 129 Mo. App. 206, 107 S. W. 1112; *Self v. Langley Mills*, 123 S. C. 179, 115 S. E. 754.

¹⁷ *Furst v. W. T. Rawleigh Medical Co.*, 282 Ill. 366, 118 N. E. 763.

¹⁸ *Clawson v. Clayton*, 33 Utah 266, 93 Pac. 729.

¹⁹ *G. W. Jones Lumber Co. v. Wisarkana Lumber Co.*, 125 Ark. 65, 187 S. W. 1068.

tion no distinction seems to be drawn.²⁰ It has been held in numerous cases that a court will entertain jurisdiction of an action to compel an inspection of the corporate books of a foreign corporation and will require an officer having custody thereof to permit a proper person to examine and copy the same, where such books are within the jurisdiction.¹ The courts of New York, however, have taken the view that the common law right of a stockholder to inspect the books of his company does not exist as against a foreign corporation doing business in the state, whether the stockholder is a resident or non-resident of the commonwealth.²

Where the statutory provision for the inspection of the books of the corporation in effect provides that every corporation formed under that provision shall keep the stock book open for inspection of its stockholders and creditors, a corporation not organized under the provisions of that statute is not within the requirement as to the inspection of the stock book.³

§ 774. Enforcement of Right by Mandamus.—An action for damages is an inadequate remedy where a stockholder meets with a denial of his right of inspection, and, therefore, mandamus against the custodian of the books sought to be inspected is regarded as an appropriate and proper remedy.⁴ The courts are not agreed as to whether or not a stockholder is entitled, as a matter of course,

²⁰ *Venner v. Chicago City R. Co.*, 246 Ill. 170, 92 N. E. 643, 138 A. S. R. 229, 20 A. C. 607. However, see statutory provisions of the particular state.

¹ *Nettles v. McConnell*, 151 Ala. 538, 43 So. 838; *Cummings v. Lake Torpedo Boat Co.*, 90 Conn. 638, 98 Atl. 580, L. R. A. 1916F 1033; *Andrews v. Mines Corp.*, 205 Mass. 121, 137 A. S. R. 428, 91 N. E. 122; *State ex rel. Quinn v. Thompson's Malted Food Co.*, 160 Wis. 671, 152 N. W. 458; *Self v. Langley Mills*, 123 S. C. 179, 115 S. E. 754.

² *Re Rappleye*, 43 App. Div. 84, 59 N. Y. Supp. 338; *In re Crosby*, 43 App. Div. 618, 59 N. Y. Supp. 340. See, contra, *People ex rel. Singer v. Knickerbocker Trust Co.*, 38 Misc. Rep. 446, 77 N. Y. Supp. 1000; *People ex rel. Miles v. Montreal & B. Copper Co.*, 40 Misc. Rep. 282, 81 N. Y. Supp. 974.

³ *Morgan v. Howard*, 293 Fed. 650, 54 App. D. C. 3.

⁴ *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156; *Hobbs v. Tom Reed Gold Min. Co.*, 164 Cal. 497, 129 Pac. 781, 43 L. R. A. (N. S.) 1112; *Webster v. Bartlett Estate Co.*, 35 Cal. App. 283, 169 Pac. 702; *State v. New Orleans Gas Light Co.*, 49 La. Ann. 1556, 22 So. 815; *Neubert v. Armstrong Water Co.*, 211 Pa. St. 582, 61 Atl. 123; *Brown v. Crystal Ice Co.*, 122 Tenn. 239, 122 S. W. 84, 19 A. C. 308.

to a writ of mandamus to enforce his statutory or constitutional right to inspect the books of the corporation. In some states the right to the writ is very generally asserted to exist whenever the stockholder brings himself within the provisions of the enactment.⁵ Probably, however, even in such states due precaution may be taken as to time and place, so as to prevent interruption of business or other serious inconvenience to the corporation.⁶

In other states the provisions authorizing the stockholders to inspect the books of the corporation, or certain books, have been held not to affect the rule of practice that mandamus is a discretionary writ, which will not be issued except for just cause and a proper purpose.⁷

§ 775. Statutory Penalty Where Officer of Corporation Refuses Inspection.—It is provided by statute, in some of the states, that every officer or agent of any corporation, having or keeping an office within the state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity to do so, is guilty of a misdemeanor.⁸

⁵ See *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050, 87 A. S. R. 156; *Stone v. Kellogg*, 165 Ill. 192, 46 N. E. 222, 56 A. S. R. 240; *Ellsworth v. Dorwart*, 95 Iowa 108, 58 A. S. R. 427; *State v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 182 N. W. 354, 22 A. L. R. 1; *State v. Malleable Iron Range Co.*, 177 Wis. 582, 187 N. W. 646, 22 A. L. R. 5.

⁶ *Furst v. W. T. Rawleigh Medical Co.*, 282 Ill. 366, 118 N. E. 763; *People ex rel. Britton v. American Press Assoc.*, 148 App. Div. 651, 133 N. Y. Supp. 216; *State ex rel. Brandl v. Silver King Consol. Min. Co.*, 37 Utah 62, 106 Pac. 520.

⁷ *Guthrie v. Harkness*, 199 U. S. 148, 26 S. C. R. 4, 50 L. Ed. 130, 4 A. C. 433; *State ex rel. Costello v. Middlesex Bkg. Co.*, 87 Conn. 483, 88 Atl. 861; *White v. Manter*, 109 Me. 408, 84 Atl. 890, 42 L. R. A. (N. S.) 332; *Jackson v. Hopkins*, 113 Md. 557, 78 Atl. 4; *Dintenfass v. Amber Star Films Corp.*, 39 R. I. 555, 99 Atl. 516; *McMahon v. Dispatch Printing Co. (N. J. Law)*, 129 Atl. 425; *Hegewald Co. v. State ex rel. Hegewald*, 196 Ind. 600, 149 N. E. 170, 43 A. L. R. 775.

⁸ California Penal Code, sec. 565; Idaho Comp. Stats. 1919, sec. 8506; Montana Rev. Codes 1921, sec. 11447. See statutory provisions of other states.

CHAPTER XLIV.

DIVIDENDS.

- § 776. In General.
- § 777. Dividends From Surplus Profits.
- § 778. What Are Surplus Profits.
- § 779. Surplus Profits of a Mining Corporation.
- § 780. Who Are Entitled to Dividends.
- § 781. Rights of Life Tenants and Remaindermen in Dividends.
- § 782. Dividends on Preferred Stock.
- § 783. Cumulative Dividends.
- § 784. Rights of Stockholders Upon Declaration of Dividends.
- § 785. Right of Corporation to Apply Dividend on Debt of Stockholder.
- § 786. Compelling a Declaration of Dividends.
- § 787. Directors Empowered to Declare Dividends.
- § 788. Right to Rescind a Declaration of a Dividend.
- § 789. Enforcement of Law Prohibiting Improper Dividends.
- § 790. Cash Dividends.
- § 791. Resolution Declaring a Dividend.
- § 792. Stock Dividends.
- § 793. Stock Dividend Resolution.
- § 794. Dividends Payable in Property.
- § 795. Scrip Dividends.
- § 796. Scrip Dividend Resolution.
- § 797. Scrip Dividend Certificate.
- § 798. Scrip Dividend Certificate. [Another Form.]
- § 799. Notice of Dividend.
- § 800. Distribution of Assets Other Than Dividends Among Stockholders.

§ 776. **In General.**—The word “dividend” does not mean simply profits, but it means such profits, or such portion of the profits, as the directors, by proper resolution, have ordered distributed among the stockholders.¹ A dividend to the stockholders of a corporation, when spoken of in reference to an existing organization engaged in the transaction of business, and not one being closed up and dissolved, is always understood as a fund which the corporation sets apart from its profits to be divided among its members.² The right of stockholders to dividends which have been declared is a substantial right, inhering in the shares

¹ Knight v. Alamo Mfg. Co., 190 Mich. 223, 157 N. W. 24, 6 A. L. R. 789.

² Mobile & O. R. Co. v. Tennessee, 153 U. S. 486, 14 S. C. R. 963, 38 L. Ed. 793.

of stock.³ After dividends have been declared, they become a personal debt from the corporation to the shareholder,⁴ although they are made payable at a future date.⁵

A dividend may be declared periodically in whatever amount may at such times be warranted by the condition of the business, or only at such times as the directors see fit. Yet a dividend may be legal even though not formally declared, it being paid by common consent. The stockholders may agree among themselves informally to distribute a certain sum as dividends without going through the form of corporate action.⁶ A division of profits without the formality of declaring a dividend is the equivalent of declaring a dividend.⁷

Where a corporation has established a practice of declaring dividends at stated intervals, a failure to do so at one such time or for the customary amount often affects the credit of the corporation to an extent not warranted by a closer inspection of the reason for the lapse.

§ 777. Dividends From Surplus Profits.—In most states, the payment of dividends other than from surplus profits arising from the business is expressly prohibited by statute; nor must the directors divide, withdraw, or pay to the stockholders or any of them any part of the capital stock.⁸ In other words, in order to pro-

³ *Willis v. Lauridson*, 161 Cal. 106, 118 Pac. 530.

⁴ *Cates v. Consolidated Realty Co.*, 25 Cal. App. 531, 144 Pac. 301; *Staats v. Biograph Co.*, 236 Fed. 454, 149 C. C. A. 506, L. R. A. 1917B 728; *Gemmell v. Davis*, 75 Md. 546, 23 Atl. 1032, 32 A. S. R. 412; *Yeaman v. Galveston City Co.*, 106 Texas 389, 167 S. W. 710, A. C. 1917E 191.

⁵ *Northwestern Marble, etc., Co. v. Carlson*, 116 Minn. 438, 133 N. W. 1014, A. C. 1913B 552; *Wallin v. Johnson City Lumber & Mfg. Co.*, 136 Tenn. 124, 188 S. W. 577, L. R. A. 1917B 323.

⁶ *Barnes v. Spencer & Barnes Co.*, 162 Mich. 509, 127 N. W. 752, 139 A. S. R. 587; *Thiry v. Banner Window Glass Co.*, 81 W. Va. 39, 93 S. E. 958, L. R. A. 1918B 1048.

⁷ *Hartley v. Pioneer Iron Works*, 181 N. Y. 73, 73 N. E. 576.

⁸ California Civil Code, sec. 309 (California section permits dividends to be made from other than surplus profits if authorized by the commissioner of corporations); Idaho Comp. Stats. 1919, sec. 4715; Montana Rev. Codes 1921, sec. 5939; Kansas Rev. Stats. 1923, sec. 17-308; Oklahoma Comp. Stats. 1921, sec. 5336; North Dakota Comp. Laws 1913, sec. 4543; South Dakota Rev. Code 1919, sec. 8789; Washington Rem. Comp. Stats. 1922, sec. 3823.

vide the stockholders with a return on their investment, no part of that investment may be returned to them in the form of so-called dividends. The dividends here referred to are such as are distributed from time to time in the course of the regular business of the corporation, and should not be confused with the share of the assets of the corporation which is given to each stockholder upon the dissolution of the corporation, sometimes referred to as a dividend. The reason for this rule is that the capital represented by the stock of a corporation is a trust fund for its creditors and the law does not permit the shareholders to divide it among themselves until upon winding up the business, all creditors have been paid.⁹ This rule does not, however, prevent a division of the property of the corporation among its stockholders where the very purpose of the incorporation was such. Thus, a corporation formed for the purpose of turning the property of a partnership into cash and distributing the proceeds to the stockholders may proceed with its plan without violating this principal of law.¹⁰

§ 778. What Are Surplus Profits.—The term “surplus profits” is the equivalent of net receipts, that is, the receipts of a business after deducting current expenses. Neither the money earned as interest, however well secured, or certain to be eventually paid, nor mere advance in value of property prior to its sale, not estimated profits on partially executed contracts, constitutes profit within the meaning of such a statute so as to entitle the directors of a corporation to make dividends therefrom.¹¹ However, an appreciation in value of assets may be taken into account in determining whether or not a profit has been made, and may be distributed as dividends in the same manner as profits arising from earnings, where such appreciation has been actually realized.¹² In view of the difficulty in some cases of determining just what may be included in the surplus profits, the prevailing judicial opinion is that the apportionment of the net earnings to the payment of

⁹ Kohl v. Lilienthal, 81 Cal. 378, 20 Pac. 401, 22 Pac. 689, 6 L. R. A. 520.

¹⁰ Baldwin v. Miller & Lux, 152 Cal. 454, 92 Pac. 1030.

¹¹ Southern California Home Builders v. Young, 45 Cal. App. 679, 188 Pac. 586; Park v. Grant Locomotive Point Works, 40 N. J. Eq. 114, 3 Atl. 162, 10 A. & E. C. C. 231.

¹² Roberts v. Roberts-Wicks Co., 184 N. Y. 257, 77 N. E. 13, 112 A. S. R. 607, 6 A. C. 213, 3 L. R. A. (N. S.) 1034.

cash dividends is largely one of policy, entrusted to the discretion of the directors, which, when honestly and intelligently exercised, will not be lightly overruled.¹³

§ 779. Surplus Profits of a Mining Corporation.—A mining corporation stands in a peculiar position with respect to the application of the rule that none of the capital stock must be distributed. Its principal property, the mine, can be used only by consuming it. But a mining corporation, like any other corporation organized for the purpose of utilizing a wasting property, as a mine, a lease, or a patent, is not deemed to have divided its capital merely because it has distributed the net proceeds of its mining operations, although the necessary result is that so much has been subtracted from the substance of its estate. It may distribute its net earnings, although the value of the mine is thereby diminished. But it may not sell the mine, or any part of it, and distribute the proceeds. In this sense, and in this sense only, has the law as to dividends been held to apply to mining corporations.¹⁴

§ 780. Who Are Entitled to Dividends.—The owner of the stock as shown by the books of the corporation at the time of the declaration is entitled to the dividends so declared¹⁵ as against an owner of the stock at the time fixed for payment.¹⁶ It is immaterial that the dividends were actually earned during the time that the stock was in the hands of a previous owner, even though a dividend might well have been declared at that time.¹⁷ Dividends

¹³ *Excelsior Water & Min. Co. v. Pierce*, 90 Cal. 131, 145, 27 Pac. 44; *Zellerbach v. Allenberg*, 99 Cal. 57, 70, 33 Pac. 786.

¹⁴ *Excelsior Water Co. v. Pierce*, 90 Cal. 131, 140, 27 Pac. 44; *Lee v. Neuchatel Asphalt E. Co.*, L. R. 41 Ch. Div. 1, 24.

¹⁵ *Ashton v. Zeila Min. Co.*, 134 Cal. 408, 66 Pac. 494; *Redhead v. Iowa Nat. Bank*, 127 Iowa 572, 103 N. W. 796; *Gordon v. James*, 86 Miss. 719, 39 So. 18, 1 L. R. A. (N. S.) 461; *Cook v. Monroe*, 45 Neb. 349, 63 N. W. 800; *Robertson v. De Brulatour*, 188 N. Y. 301, 80 N. E. 938; *Hubbard v. George*, 81 W. Va. 538, 94 S. E. 974, L. R. A. 1918C 835.

¹⁶ *Bowers v. Post*, 209 Fed. 660; *Cogswell v. Second Nat. Bank*, 78 Conn. 75, 60 Atl. 1059; *Hopper v. Sage*, 112 N. Y. 530, 20 N. E. 350, 8 A. S. R. 771.

¹⁷ *Mann v. Anderson*, 106 Ga. 818, 32 S. E. 870; *Northern Cent. Dividend Cases*, 126 Md. 16, 94 Atl. 338; *Jermain v. Lake Shore & M. S. R. Co.*, 91 N. Y. 483, *Tepfer v. Ideal Gas & Elec. Co.*, 58 Misc. Rep. 396, 109 N. Y. Supp. 664; *La Fountain Woolson Co. v. Brown*, 91 Vt. 340, 101 Atl. 36, L. R. A. 1917F 551.

are due to the true owners of the shares. Thus in paying dividends to the record holders of stock, the ownership of which is in litigation, the corporation decides that such holders are the true owners and that the adverse claimants have no interest therein; and the corporation makes such decision at its peril.¹⁸ The proper procedure for the corporation in case of doubt or notice of conflicting claims is to interplead the contesting parties.¹⁹

§ 781. Rights of Life Tenants and Remaindermen in Dividends.—Few legal questions present greater intrinsic difficulties, or have called forth a greater contrariety of views and opinions, as well as the practical results, than the one as to the conflicting rights of life beneficiaries and remaindermen to dividends.²⁰ There are three rules which obtain in the various jurisdictions, namely, the Massachusetts rule which is substantially the same as the later English rule, the Pennsylvania rule or sometimes called the American rule, and the Kentucky rule. While they rest upon different principles, they do not, as applied to all situations, produce divergent practical results. Under all three rules the entire amount of an extraordinary cash dividend, declared during the life interest, from corporate earnings that accumulate during the life interest, goes to the life beneficiary. It is only the early English rule, now practically obsolete, that denies the benefit of such dividend to the life beneficiary.

Under the Massachusetts rule and under the Kentucky rule, the entire amount of an extraordinary cash dividend, declared during the life interest, from earnings that accumulate wholly before the commencement of the life interest, goes to the beneficiary,¹ but

¹⁸ *MacDermot v. Hayes*, 175 Cal. 95, 170 Pac. 616; *Prince Investment Co. v. St. Paul & S. C. Land Co.*, 68 Minn. 121, 70 N. W. 1079; *McCord v. Nabours*, 101 Texas 494, 109 S. W. 913, 111 S. W. 144.

¹⁹ *Cross v. Eureka Lake & Y. Canal Co.*, 73 Cal. 302, 14 Pac. 885, 2 A. S. R. 808.

²⁰ *Holbrook v. Holbrook*, 74 N. H. 201, 66 Atl. 124, 12 L. R. A. (N. S.) 768; *In re Heaton*, 89 Vt. 550, 96 Atl. 21, L. R. A. 1916D 201.

¹ *Smith v. Dana*, 77 Conn. 543, 60 Atl. 117, 107 A. S. R. 51, 69 L. R. A. 76; *De Koven v. Alsop*, 205 Ill. 309, 68 N. E. 930, 63 L. R. A. 587; *Talbot v. Milliken*, 221 Mass. 367, 108 N. E. 1060; *Hite v. Hite*, 93 Ky. 257, 20 S. W. 778, 40 A. S. R. 189, 19 L. R. A. 173.

under the Pennsylvania rule it goes in its entirety to the remainderman.²

Under the Massachusetts rule and under the Kentucky rule, the entire amount of an extraordinary cash dividend, declared during the life interest, from earnings which accumulated partly before the commencement and partly during the continuance of the life interest, goes to the beneficiary,³ but under the Pennsylvania rule it is apportioned between the remainderman and the beneficiary in such a way as to compensate the remainderman for loss, due to that dividend, of intrinsic or book value of the shares as of the date they became subject to the life interest.⁴

Under the Massachusetts rule, a stock dividend, declared during the life interest, which was earned wholly during the life interest, that is, earned in the sense that it does not reduce the intrinsic or book value of the original shares as of the date they become subject to the life interest, goes in its entirety to the remainderman,⁵ but under the Pennsylvania rule,⁶ and under the Kentucky rule,⁷ it goes in its entirety to the beneficiary.

A stock dividend, declared during the life interest, which was earned wholly before the commencement of the life interest, goes in its entirety to the remainderman under the Massachusetts rule

² Foard v. Safe Deposit & Trust Co., 122 Md. 476, 89 Atl. 724; Smith's Estate, 140 Pa. 344, 21 Atl. 438, 23 A. S. R. 237.

³ Gray v. Hemenway, 206 Mass. 126, 92 N. E. 31, 138 A. S. R. 377; Humphrey v. Lang, 169 N. C. 601, 86 S. E. 526, L. R. A. 1916B 626; Cox v. Gaulbert, 148 Ky. 407, 147 S. W. 25.

⁴ In re Duffill, 180 Cal. 748, 183 Pac. 337; United States Trust Co. v. Heye, 224 N. Y. 242, 120 N. E. 645; Sloan's Estate, 258 Pa. 368, 102 Atl. 31; Miller v. Safe Deposit & T. Co., 127 Md. 610, 96 Atl. 766.

⁵ Palmer v. Pullman Co., 252 Fed. 286; Jackson v. Maddox, 136 Ga. 31, 70 S. E. 865, A. C. 1912B 1216; Hyde v. Holmes, 198 Mass. 287, 84 N. E. 318.

⁶ In re Gartenlaub, 185 Cal. 375, 197 Pac. 90, 24 A. L. R. 1; Bryan v. Aikin, 10 Del. Ch. 446, 86 Atl. 674, 45 L. R. A. (N. S.) 477; Cox v. Gaulbert, 148 Ky. 407, 147 S. W. 25; Northern Central Dividend Cases, 126 Md. 16, 94 Atl. 338; Goodwin v. McGaughey, 108 Minn. 248, 122 N. W. 6; Holbrook v. Holbrook, 74 N. H. 201, 66 Atl. 124, 12 L. R. A. (N. S.) 768; Day v. Faulks, 79 N. J. Eq. 66, 81 Atl. 354; Macy v. Ladd, 227 N. Y. 670, 125 N. E. 829; Sloan's Estate, 258 Pa. 368, 102 Atl. 31; Wallace v. Wallace, 90 S. C. 61, 72 S. E. 553; Pritchitt v. Nashville Trust Co., 96 Tenn., 472, 36 S. W. 1064, 33 L. R. A. 856; Re Heaton, 89 Vt. 550, 96 Atl. 21, L. R. A. 1916D 201; Miller v. Payne, 150 Wis. 354, 136 N. W. 811.

⁷ Cox v. Gaulbert, 148 Ky. 407, 147 S. W. 25.

and under the Pennsylvania rule,⁸ but under the Kentucky rule it goes in its entirety to the beneficiary.⁹

Under the Massachusetts rule a stock dividend declared during the life interest, which was earned partly before and partly during the life interest, goes in its entirety to the remainderman,¹⁰ but under the Kentucky rule to the beneficiary,¹¹ and under the Pennsylvania rule is apportioned in such a way as to compensate the remainderman for the loss, in consequence of the dividend, of intrinsic or book value of the original shares as of the date they became subject to the life interest.¹²

The prevailing view gives ordinary current dividends, without apportionment, to the life beneficiary if declared during the continuance of the life interest, and to the remainderman if declared before the commencement or after the termination of the life interest.¹³

Extraordinary dividends, in the sense in which this term is used above, are dividends which represent accumulations of corporate earnings other than those accruing during regular dividend periods.

§ 782. Dividends on Preferred Stock.—The preference which preferred stock has over common stock as to dividends is entirely a matter of contract, which is generally set forth in the by-laws of the corporation, on the certificate of the stock, or elsewhere.¹⁴ Preferred stock is sometimes issued with dividends at a stipulated rate guaranteed. This, however, in the absence of a statute au-

⁸ *Blinn v. Gillett*, 208 Ill. 473, 70 N. E. 704, 100 A. S. R. 234; *D'Ooge v. Leeds*, 176 Mass. 558, 57 N. E. 1025; *Smith's Estate*, 140 Pa. 344, 21 Atl. 438, 23 A. S. R. 237.

⁹ *Hite v. Hite*, 93 Ky. 257, 20 S. W. 778, 40 A. S. R. 189, 19 L. R. A. 173.

¹⁰ *Bishop v. Bishop*, 81 Conn. 509, 71 Atl. 583; *Billings v. Warren*, 216 Ill. 281, 74 N. E. 1050; *Hyde v. Holmes*, 198 Mass. 287, 84 N. E. 318; *In re Brown*, 14 R. I. 371, 51 A. R. 397.

¹¹ *Cox v. Gaulbert*, 148 Ky. 407, 147 S. W. 25.

¹² *Holbrook v. Holbrook*, 74 N. H. 201, 66 Atl. 124, 12 L. R. A. (N. S.) 768; *In re Gartenlaub*, 185 Cal. 375, 197 Pac. 90, 24 A. L. R. 1; *In re Stokes*, 240 Pa. 288, 87 Atl. 975; *Wallace v. Wallace*, 90 S. C. 61, 72 S. E. 553.

¹³ *Mann v. Anderson*, 106 Ga. 818, 32 S. E. 870; *Union Safe Deposit & T. Co. v. Dudley*, 104 Me. 297, 72 Atl. 166; *In re Affleck*, 83 Misc. Rep. 659, 146 N. Y. Supp. 835; *McKeown's Estate*, 263 Pa. 78, 106 Atl. 189.

¹⁴ *Elkins v. Camden & A. R. Co.*, 36 N. J. Eq. 233; *West Chester & P. R. Co. v. Jackson*, 77 Pa. 321.

thorizing an absolute guaranty, does not mean that dividends at that rate are to be paid at all events, but is an undertaking that they shall be paid only when there are net earnings available for the purpose.¹⁵ A guaranty of dividends at a certain rate has been held in some cases to bestow on the stock the right of payment from future profits, of dividends in arrears thereon.¹⁶

In the absence of a governing statute or of any violation of a special agreement for the payment of dividends, the holders of preferred stock in a corporation are bound to abide by the action of the directors thereof as regards the declaration of dividends.¹⁷ However, where the right is fixed by contract, the directors are bound thereby and may not divert to other purposes funds which should be distributed as dividends.¹⁸

In the absence of a statutory provision, the holder of preferred stock has none of the prerogatives of a creditor as regards his right to dividends, which is not to be considered as a debt until it has been declared.¹⁹ Under a statute, however, it has been held otherwise.²⁰

When a dividend is declared, preferred stockholders are entitled to first claim to the extent of their preference for the current year, and if there remain a sum more than sufficient to pay a similar dividend on the common stock, both classes of stockholders are entitled to share equally in the excess.¹

§ 783. Cumulative Dividends.—The right of preferred stockholders to cumulative dividends is generally stipulated in the agreement or inferred from a guaranty of the dividends; and will not be defeated except by an expressed or implied intention to the contrary, while the corporation is a going concern.² When the

¹⁵ *Field v. Lamson & Goodnow Mfg. Co.*, 162 Mass. 388, 38 N. E. 1126, 27 L. R. A. 136; *Feld v. Roanoke Invest. Co.*, 123 Mo. 603, 27 S. W. 635; *Miller v. Ratterman*, 47 Ohio St. 141, 24 N. E. 496.

¹⁶ *Boardman v. Lake Shore & M. S. R. Co.*, 84 N. Y. 157.

¹⁷ *Union P. R. Co. v. Frank*, 226 Fed. 906, 141 C. C. A. 510; *Smith v. Southern Foundry Co.*, 166 Ky. 208, 179 S. W. 205; *Spear v. Rockland-Rockport Lime Co.*, 113 Me. 285, 93 Atl. 754, 6 A. L. R. 793 and note.

¹⁸ *Burk v. Ottawa Gas & E. Co.*, 87 Kan. 6, 123 Pac. 857, A. C. 1913D 772.

¹⁹ *Booth v. Union Fibre Co.*, 137 Minn. 7, 162 N. W. 677.

²⁰ *Cotting v. New York & N. E. R. Co.*, 54 Conn. 156, 5 Atl. 851.

¹ *Englander v. Osborne*, 261 Pa. St. 366, 104 Atl. 614, 6 A. L. R. 800.

² *Gardner Sav. Bank v. Taber-Prang Art Co.*, 189 Mass. 363, 75 N. E. 705; *Sterling v. H. F. Watson Co.*, 241 Pa. 105, 88 Atl. 297.

contract of the preferred stock provides that the prescribed dividend shall be cumulative, the holder has a right to have paid any arrearages of dividends for previous years before any dividends whatever may be paid to the holders of the common stock.³ Of course when the contract provides that dividends shall not be cumulative, it is plain that if the holders of such stock do not get the dividends in each particular year, they never can have them.⁴ But when the stock is specified as noncumulative the holders may be entitled to arrearages of dividends when the contract provides that the shareholders shall be absolutely entitled to dividends whenever in any year the net earnings are sufficient for the payment thereof, since, under these circumstances, the stockholders, whose rights are fixed, are entitled to their dividend whether the directors declare it or not.⁵ The fact that preferred shares have at some time received extra dividends, in common with the other stock, does not affect their right to any arrears of dividend of later accumulation, nor is the amount of such extra dividend to be deducted in payment of the accumulations.⁶

§ 784. Rights of Stockholders Upon Declaration of Dividends.—When a dividend has been declared and become payable according to the terms of the vote declaring it, each stockholder has the right to demand payment of the proportional part which belongs to his share of stock, and to sue the corporation for it if it does not pay on demand. The cause of action in favor of each stockholder and against the corporation does not arise from any actual contract between the corporation and its stockholders, but from the nature of the organization and the relation of the stockholders to the corporation and its property.⁷

A dividend is not an enforceable debt against a corporation until it is declared and set apart for that purpose.⁸ Where it has been

³ *Cotting v. New York & N. E. R. Co.*, 54 Conn. 156, 5 Atl. 851.

⁴ *Nickals v. New York, L. E. & W. R. R. Co.*, 15 Fed. 575, 21 Blatchf. 177.

⁵ *Wood v. Lary*, 47 Hun (N. Y.) 550, 557, appeal dismissed on other grounds 124 N. Y. 83, 26 N. E. 338.

⁶ *Fidelity Trust Co. v. Lehigh Valley R. Co.*, 215 Pa. 610, 64 Atl. 829, 7 A. C. 613.

⁷ *Ford v. Easthampton Rubber Thread Co.*, 158 Mass. 84, 32 N. E. 1036, 35 A. S. R. 462, 20 L. R. A. 65.

⁸ *Knight v. Alamo Mfg. Co.*, 190 Mich. 223, 157 N. W. 24, 6 A. L. R. 789;

declared, an action in assumpsit is proper.⁹ And the same form of action will lie where scrip has been issued in payment of the dividend.¹⁰ Mandamus is not a proper remedy in such a case.¹¹ The statute of limitations does not run against an action for dividends by a stockholder in a corporation until after demand and refusal, or notice that the stockholder's right to dividends is denied.¹²

§ 785. Right of Corporation to Apply Dividend on Debt of Stockholder.—Where the owner of stock is personally indebted to the corporation, the latter may set off the amount of the debt against the amount of the dividend due the stockholder. The corporation may not, however, follow the stock into the hands of a transferee and claim a lien upon dividends declared while the stock is owned by the transferee. Having no lien upon the stock for the debt, it has no lien upon dividends declared upon it.¹³

§ 786. Compelling a Declaration of Dividends.—As a general rule, the directors of a corporation have the discretionary power to determine not only the amount of all dividends, including the dividends on preferred stock, but also the circumstances under which they will or may declare them.¹⁴ There have been numerous attempts to induce courts to interfere with directors in the exercise of their discretion, but they have quite uniformly refused

Godley v. Crandall & Godley, Co., 212 N. Y. 121, 105 N. E. 818, L. R. A. 1915D, 632; Kidd v. Puritana Cereal Food Co., 145 Mo. App. 502, 122 S. W. 784; Gibbons v. Mahon, 136 U. S. 549, 10 S. C. R. 1057, 34 L. Ed. 525; Corgan v. George F. Lee Coal Co., 218 Pa. St. 386, 67 Atl. 655, 120 A. S. R. 891, 11 A. C. 838.

⁹ West Chester & P. R. Co. v. Jackson, 77 Pa. 321.

¹⁰ Chaffee v. Rutland R. Co., 55 Vt. 110. See, also, Bates v. Androscoggin & K. R. Co., 49 Me. 491.

¹¹ People v. Central Car & Mfg. Co., 41 Mich. 166, 49 N. W. 925.

¹² Philadelphia, W. & B. R. Co. v. Cowell, 28 Pa. St. 329, 70 A. D. 128; MacDermot v. Hayes, 175 Cal. 95, 170 Pac. 616.

¹³ Sargent v. Franklin Ins. Co., 8 Pick. (Mass.) 90, 19 A. D. 306; Gemmell v. Davis, 75 Md. 546, 23 Atl. 1032, 32 A. S. R. 412.

¹⁴ Gibbons v. Mahon, 136 U. S. 549, 10 S. C. R. 1057, 34 L. Ed. 525; Staats v. Biograph Co., 236 Fed. 454, 149 C. C. A. 506, L. R. A. 1917B 728; Spear v. Rockland-Rockport Lime Co., 113 Me. 285, 93 Atl. 754, 6 A. L. R. 793; Dodge v. Ford Motor Co., 204 Mich. 459, 170 N. W. 668, 3 A. L. R. 413; Beeler v. Standard Investment Co., 107 Wash. 442, 181 Pac. 896, 5 A. L. R. 363.

to do so, unless it appeared that the directors had willfully abused their discretion and acted in bad faith and in neglect of duty. It takes a very strong case to induce a court to order directors to declare a dividend. A court has no jurisdiction to do so unless fraud or a breach of trust is involved.¹⁵ However, the courts will not allow the directors to use their powers oppressively by refusing to declare a dividend when the net profits and the character of the business warrant it.¹⁶

The declaration of a dividend may be compelled by a court of equity at the suit of the minority stockholders of a corporation.¹⁷ In an action to compel the declaration of a dividend, the stockholder must allege in his bill that an application has been made to the corporate directors to declare the dividend sought for, or state the reason why such an application would be ineffectual, if there were any funds to divide.¹⁸

§ 787. Directors Empowered to Declare Dividends.—The directors alone, unless otherwise provided by statute, the corporate charter, or other governing instrument or contract, have the power to declare a dividend of the earnings of the corporation. To them the law entrusts the management of the corporate business, and they are best able to determine whether financial conditions will warrant the payment of the dividend.¹⁹ They may not only declare the amount of dividends, but also the time of their payment. They have the like power to appoint a place of payment so that it be within a reasonable convenient distance from the place of business of the corporation and from that of the stockholders.²⁰

¹⁵ *Staats v. Biograph Co.*, 236 Fed. 454, 149 C. C. A. 506, L. R. A. 1917B 728.

¹⁶ *Storow v. Texas Consol. Compress & Mfg. Ass'n*, 87 Fed. 612, 59 U. S. App. 120, 31 C. C. A. 139; *United States L. Ins. Co. v. Spinks*, 126 Ky. 405, 103 S. W. 335, 13 L. R. A. (N. S.) 1053.

¹⁷ *Knight v. Alamo Mfg. Co.*, 190 Mich. 223, 157 N. W. 24, 6 A. L. R. 789.

¹⁸ *Spear v. Rockland-Rockport Lime Co.*, 113 Me. 285, 93 Atl. 754, 6 A. L. R. 793.

¹⁹ *Zellerbach v. Allenberg*, 99 Cal. 57, 33 Pac. 786; *Grant v. Ross*, 100 Ky. 44, 37 S. W. 263; *Knight v. Alamo Mfg. Co.*, 190 Mich. 223, 157 N. W. 24, 6 A. L. R. 789.

²⁰ *Equitable Life Assur. Soc. v. Union Pacific R. Co.*, 212 N. Y. 360, 106 N. E. 92, L. R. A. 1915D 1052; *Hyams v. Old Dominion Copper Min., etc., Co.*, 82 N. J. Eq. 507, 89 Atl. 37.

The discretion of directors is not an arbitrary one, but must be exercised fairly and honestly; and when it appears that the proceedings are unfair, that the officers are acting wantonly and in bad faith, or in disregard of the rights of members, the courts will intervene.¹

§ 788. Right to Rescind a Declaration of a Dividend.—A cash dividend once declared and a fund having been set aside for the payment thereof, it may not subsequently be set aside by the directors either by rescinding in terms the declaration or by effecting the same end by, for instance, making an assessment upon the stock of the same amount payable at the same time as the dividend.² For a similar reason, therefore, if no fund has as yet been set aside for the payment of the dividend, and the declaration of the dividend has not as yet become known to the stockholders, a rescission may be made.³ There is no reason, however, why a declaration of a stock dividend may not, before it has been carried into effect, be rescinded,⁴ for the effect of a proportionate distribution of stock is merely a change in the number of shares without any increase in the aggregate value. The declaration of a stock dividend, in fact, is the same as a declaration of a cash dividend followed by an assessment for the same amount.

§ 789. Enforcement of Law Prohibiting Improper Dividends.—Any stockholder may have the directors enjoined from paying any portion of a dividend which has been declared in violation of law.⁵ In states where special officers are empowered to supervise the operation of certain classes of corporations, the state itself may have the payment of an objectionable dividend enjoined. Thus, in some states, the bank commissioners may bring an action

¹ *Southern California Home Builders v. Young*, 45 Cal. App. 679, 188 Pac. 586.

² *Armant v. New Orleans, etc., R. Co.*, 41 La. Ann. 1020, 7 So. 35; *McLaran v. Crescent Planing Mill Co.*, 117 Mo. App. 40, 93 S. W. 819.

³ *Ford v. Easthampton Rubber Thread Co.*, 158 Mass. 84, 32 N. E. 1036, 35 A. S. R. 462, 20 L. R. A. 65.

⁴ *Terry v. Eagle Lock Co.*, 47 Conn. 141; *Staats v. Biograph Co.*, 236 Fed. 454, 149 C. C. A. 506, L. R. A. 1917B 728; *McLaran v. Crescent Planing Mill Co.*, 117 Mo. App. 40, 93 S. W. 819.

⁵ *Reid v. Eatonton Mfg. Co.*, 40 Ga. 98, 2 A. R. 563; *Carpenter v. New York & N. H. R. Co.*, 5 Abb. Pr. (N. Y.) 277.

in the name of the people to prevent the directors of a savings bank from paying such a dividend.⁶ Where dividends have been illegally paid from capital, creditors who have been injured thereby may follow the sums paid into the hands of the individual stockholders and recover a just proportion of their claims from each.⁷ The aggrieved creditor should first, however, exhaust his remedy against the corporation assets in general,⁸ and can recover from each stockholder only the proportion of his claim that his stock bears to the whole amount of the subscribed capital stock, not exceeding, of course, except in states where there is by statute a stockholders' personal liability for corporate debts, the amount of the dividend received by him.⁹

The statutes of some states modify to some extent the rights of creditors to thus follow an illegal dividend payment. In California, for instance, no occasion can arise for this particular course of action by the creditors, for the unlimited character of the stockholders' liability for the debts of the corporation affords ample remedy.

§ 790. Cash Dividends.—The underlying idea of a cash dividend is the distribution to shareholders, as the rewards of the corporate enterprise, of a portion of the profits or surplus assets of the corporation. Usually the assets thus divided are in the form of cash, and the distribution a cash one. This, however, is not necessarily so, and there is no departure in principle or essence if the distributed assets chance to be in some other form of property.¹⁰

§ 791. Resolution Declaring a Dividend.—A certain degree of formality and reasonable certainty is required in a resolution declaring a dividend. It may be in either of the following forms:

⁶ *People v. San Francisco Savings Union*, 72 Cal. 199, 202, 13 Pac. 498.

⁷ *Bartlett v. Drew*, 57 N. Y. 587; *Williams v. Boice*, 38 N. J. Eq. 364, 6 A. & E. C. C. 361.

⁸ *Andrew v. Vanderbilt*, 37 Hun (N. Y.) 468.

⁹ *Wood v. Dummer*, Fed. Cas. No. 17944, 3 Mason 308.

¹⁰ *Green v. Bissell*, 79 Conn. 547, 65 Atl. 1056, 118 A. S. R. 156, 9 A. C. 287, 8 L. R. A. (N. S.) 1011; *Olsen v. Homestead Land & Improvement Co.*, 87 Texas 368, 28 S. W. 944.

RESOLUTIONS DECLARING DIVIDENDS.

Be It Resolved, By the board of directors of the New Era Printing Company that an annual dividend of three per cent on the subscribed capital stock of said corporation be, and the same is hereby declared, out of the surplus earnings already accrued or about to accrue and be realized from profits in carrying on its business; that said dividend be payable in money to the stockholders in proportion to the number of shares held by them respectively, at the rate of three dollars per share on the 1st day of December, 1926, subject to their respective orders at the office of the treasurer, 50 Printing House Square, Washington, D. C.

Or

Be It Resolved, By the board of directors of the New Era Printing Company that the sum of ten thousand dollars (\$10,000) be, and said sum is hereby appropriated and set apart, from the surplus profits of said corporation for the payment of the regular annual dividend of ten per cent upon its outstanding stock, said dividend to be payable on the 15th day of June, 1926; that the treasurer be, and he is hereby authorized and directed to notify the stockholders of such dividend, and to pay the same out of said appropriation when due.

§ 792. Stock Dividends.—A stock dividend does not add to the stockholder's ready cash, but it changes the form of his investment by increasing the number of his shares, thereby diminishing the value of each share and leaving the aggregate value of all his stock substantially the same.¹¹ It involves the creation and issuing of new stock,¹² and shows that the company's accumulated profits have been capitalized instead of distributed to the stockholders or retained as surplus available for distribution in money or in kind, should opportunity offer. Far from being a realization of profits of the stockholders, it tends rather to postpone such realization, in that the fund represented by the new stock has been transferred from surplus to capital and no longer is available for actual distribution.¹³ The directors, therefore, may declare a stock dividend by first, through the stockholders, increasing the amount of the capital stock in the statutory manner, and then distributing

¹¹ *Terry v. Eagle Lock Co.*, 47 Conn. 141; *Gibbons v. Mahon*, 136 U. S. 549, 10 S. C. R. 1057, 34 L. Ed. 525; *Kaufman v. Charlottesville Woolen Mills*, 93 Va. 673, 25 S. E. 1003.

¹² *Green v. Bissell*, 79 Conn. 547, 65 Atl. 1056, 118 A. S. R. 156, 9 A. C. 287, 8 L. R. A. (N. S.) 1011.

¹³ *Eisner v. Macomber*, 252 U. S. 189, 40 S. C. R. 189, 64 L. Ed. 521, 9 A. L. R. 1570.

it in proportionate amounts to the individual stockholders. The practical effect of such a proceeding upon the market price of each share of the stock is evident. The aggregate value of each stockholder's stock is not increased.

§ 793. Stock Dividend Resolution.

Resolved, That the 60,000 shares of the common stock of the Concord Gas Company, par value one hundred dollars each, received in part consideration of the sale of the company's steel business and fifty acres of land at Felton, Illinois, and of the surrender of the lease of the works at Gordon, Illinois, and the transfer of the capital stock of the Howard Coal Company, and contracts with it for gas, be divided among the stockholders of this company and that a dividend of one and one-half shares of the said common stock of the Concord Gas Company to and for each share of stock of this company, be and the same is hereby declared and made to the stockholders of this company, which said dividend of stock shall be transferred, delivered, and paid when and as soon as all the stockholders of this company shall assent to and ratify the said dividend.

§ 794. Dividends Payable in Property.—If the surplus which warrants a declaration of a dividend is in the shape of property which from its nature may readily be distributed, a "property" dividend may be declared. Thus, stock or securities of itself or other corporations which have come into its hands may be distributed in the form of dividends.¹⁴

§ 795. Scrip Dividends.—Where it is desired to retain the surplus profits for use in the business and at the same time, for any particular reason, give the stockholders some tangible evidence of the increased value of their stock, what is known as a scrip dividend may be declared.¹⁵ Each stockholder is given a certificate entitling him to some option upon a proportionate share of the securities of the corporation.¹⁶ The issue of a scrip dividend is in the discretion of the board of directors.¹⁷

¹⁴ *Leland v. Hayden*, 102 Mass. 542; *Equitable Life Assur. Soc. v. Union Pacific R. Co.*, 212 N. Y. 360, 106 N. E. 92, L. R. A. 1915D 1052.

¹⁵ *Bailey v. New York Cent. & H. R. R. Co.*, 22 Wall. (U. S.) 604, 22 L. Ed. 840.

¹⁶ *In re Robinson*, 218 Pa. 481, 67 Atl. 775.

¹⁷ *Bankers' Trust Co. v. R. E. Dietz Co.*, 157 App. Div. 594, 142 N. Y. Supp. 847.

§ 796. Scrip Dividend Resolution.

Whereas, This company has hitherto expended of its earnings for the purpose of constructing and equipping its road, and in the purchase of real estate and other properties with a view to an increase of its traffic, moneys equal in amount to eighty per cent of the capital stock of the company; and

Whereas, The several stockholders of the company are entitled to evidence of such expenditure, and to reimbursement of the same at some convenient future period;

Now, Therefore, Resolved, That a certificate signed by the president and treasurer of this company be issued to the stockholders severally, declaring that such stockholder is entitled to eighty per cent of the amount of capital stock held by him, payable ratably with the other certificates issued under this resolution, at the option of the company, out of its future earnings, with dividends thereon, at the same rates and times as dividends shall be paid on shares of the capital stock of the company, and that such certificates may be at the option of the company, convertible into stock of the company, whenever the company shall be authorized to increase its capital stock to an amount sufficient for such conversion.

§ 797. Scrip Dividend Certificate.

No.....

Under a resolution of the board of directors of this company, passed August 25, 1926, of which the above is a copy, the Railroad Company hereby certifies that A. B., being the holder of shares of the capital stock of said company, is entitled to dollars, payable ratably with the other certificates issued under said resolution, at the pleasure of the company, out of its future earnings, with dividends thereon, at the same rates and times as dividends shall be paid upon the shares of the capital stock of said company.

This certificate may be transferred on the books of the company on the surrender of this certificate.

In Witness Whereof, The said company has caused this certificate to be signed by its president and treasurer, this 18th day of September, 1926.

.....
President.
.....
Treasurer.

§ 798. Scrip Dividend Certificate. [Another Form.]

No. Shares.

This Is to Certify, That, heirs or assigns, will be entitled upon the surrender of this certificate, to shares in the capital stock of the Center Coal Company so soon as the present funded debt of the com-

pany has been paid off, or adequate provision made for its discharge when due and payment demanded; and will also be entitled to a pro rata share of any future distribution of scrip; but not to any cash dividend until this certificate has been converted into stock, as above provided.

Or this certificate may at any time, at the option of the holder thereof, be converted into stock upon payment by said holder, either in cash or in the six per cent loans of the company, of the par value of said stock, and the surrender of this certificate.

This certificate is transferable only at the office of the company.

Witness, etc.

§ 799. Notice of Dividend.—Notice of a dividend should be promptly given to all not already cognizant that it had been declared; otherwise some might sell and transfer the stock in ignorance of it and suffer loss. It may be as follows:

NOTICE OF DIVIDEND.

Office of

The New Era Printing Company,
50 Printing House Square.

Washington, D. C., May 16th, 1927.

To the Stockholders of the Above Named Company:

Notice is hereby given that at a meeting of the board of directors held on the 15th day of May, 1927, a dividend of ten per cent was declared from the net earnings of the company for the six months ending May 1, 1927. Said dividend will be paid on May 30th, 1927, to all who were stockholders of record on the books on May 20th, 1927, the date for closing transfer books.

The stock transfer book will be closed at 5 o'clock p. m., May 20th, 1927, and will be reopened May 30th, 1927, at the commencement of business, to wit, at 9 o'clock a. m.

.....
Secretary.

A notice that a dividend has been declared on preferred stock should be the same as the above, except that the words "on the preferred stock" should be contained between the words "per cent" and "was declared."

§ 800. Distribution of Assets Other Than Dividends Among Stockholders.—In California the directors of a corporation may apply to the commissioner of corporations for a permit to divide, withdraw, or pay or distribute among the stockholders or any of them, any part of the capital stock, or any property of the corporation other than dividends from the surplus profits arising from

the business thereof. The statute prescribes in detail the procedure to be followed upon such an application.¹⁸

¹⁸ California Civil Code, sec. 309½. See, also, chapter "Increase or Decrease of Capital Stock," post.

CHAPTER XLV.

CORPORATE CONTRACTS.

- § 801. Contractual Powers of Corporation.
- § 802. Liability of Corporation on Contracts.
- § 803. Scope of the Contractual Power.
- § 804. Rescission of Contracts by Corporations.
- § 805. Resolution Proposing Rescission of Contract.
- § 806. Contracts Beyond the Power of the Corporation—Ultra Vires Contracts.
- § 807. Issuing or Circulating Paper Money Prohibited.
- § 808. Contracts in Writing.
- § 809. Signature of the Corporation to the Contract.
- § 810. Presumption as to Validity of Written Contract.
- § 811. Witness Clause in Contracts.
- § 812. Witness Clause for One Corporation.
- § 813. Witness Clause for Two or More Corporations.
- § 814. Witness Clause for Corporation and Individual.
- § 815. Witness Clause for Agent of Corporation.
- § 816. Annexation of Enabling Resolution.
- § 817. Promissory Notes.
- § 818. Corporation Promissory Note With Collateral Security.
- § 819. Authorization to President and Secretary to Borrow Money and Secure Repayment Thereof.
- § 820. Certificate to Power of Attorney.
- § 821. Resolution Conferring General Power to Borrow Money and Execute Notes.
- § 822. Blue Sky Permit Authorizing Sale of Notes.
- § 823. Miscellaneous Corporate Contracts.
- § 824. Bill of Sale. (Corporation to Individual, With Guarantee of Title.)
- § 825. Assignments of Patents.
- § 826. Assignment of Patent by an Individual to a Corporation.
- § 827. Assignments of Contracts.
- § 828. Acknowledgment of an Instrument Executed by a Corporation.

§ 801. Contractual Powers of Corporation.—A corporation is endowed with the capacity to enter into any obligation or contract essential for its purposes and for the transaction of its ordinary affairs, unless expressly prohibited by law or the provisions of its charter.¹ On the other hand, a corporation is not only incapable of making contracts which are forbidden by its charter, but in general it can make none which are not necessary, either

¹ Woods Lumber Co. v. Moore, 183 Cal. 497, 191 Pac. 905, 11 A. L. R. 549; Morville v. American Tract Soc., 123 Mass. 129, 25 A. R. 40.

directly or indirectly, to effect the objects of its creation.² Subject to this qualification it has the same power as natural persons to make contracts.³

§ 802. **Liability of Corporation on Contracts.**—As a principle of law, it may be unequivocally stated that there is no distinction whatever between corporations and individuals with respect to their liability on contracts executed in their names. The fact, however, that, in view of its very nature, a corporation must enter into contracts through the medium of an agent, results more frequently in the case of corporations than in that of individuals in litigation involving general principles of law as to the relations of principal and agent. In a previous chapter the application of these principles to the transactions of corporations acting through their officers and agents was pointed out. The validity of a contract depends upon the authority of the agent; and that authority is such as the party contracting with the corporation has a right reasonably to infer from the conduct of the corporation officers and the powers of the corporation itself as set forth in its articles. The opportunity to determine the authority of the agent, therefore, is ample. The labor involved, however, and the temptation to avoid it result in many unauthorized transactions and much litigation.

§ 803. **Scope of the Contractual Power.**—Those contracts which are *ultra vires*, that is, not within the scope of the purposes of the corporation as set forth in its articles, or prohibited by law, have already been dealt with in a general way. It was pointed out that, except where the corporation had taken advantage of the fruits of a transaction, only those contracts are binding upon the corporation which relate to matters which are necessarily incident to and further the purposes for which the corporation was created. To further its purposes, a corporation may borrow money,⁴ give

² *Gregg v. Little Rock Chamber of Commerce*, 120 Ark. 426, 179 S. W. 658, A. C. 1917C 784, L. R. A. 1916D 1006; *Woods Lumber Co. v. Moore*, 183 Cal. 497, 191 Pac. 905, 11 A. L. R. 549.

³ *Pixley v. Western Pacific R. Co.*, 33 Cal. 183, 91 A. D. 623; *Portland Lumbering, etc., Co. v. East Portland*, 18 Ore. 21, 22 Pac. 536, 6 L. R. A. 290.

⁴ *Wright v. Hughes*, 119 Ind. 324, 21 N. E. 907, 12 A. S. R. 412; *Scouton v. Stony Brook Lumber Co.*, 261 Pa. St. 241, 104 Atl. 548, 7 A. L. R. 1433.

security therefor,⁵ issue negotiable instruments for value received,⁶ advertise its business,⁷ and make all contracts necessary for the acquisition and preservation of property.⁸ Some of these powers, such, for instance, as the power to mortgage, are limited or subjected to the necessity of compliance with formalities, in the cases of certain kinds of corporations, by statutory regulation.

§ 804. Rescission of Contracts by Corporations.—Corporations possess the same power to modify or rescind existing contracts by mutual consent of the parties thereto that natural persons have. The power to modify or rescind a corporate contract has been held to reside in the board of directors, and not in the stockholders.⁹ The president is without authority to modify or rescind contracts,¹⁰ even though he has power to make the contract, since power to enter into a contract does not include power to rescind it.¹¹

§ 805. Resolution Proposing Rescission of Contract.

Be It Resolved, That this corporation, New Lead Mining Company, propose to the Sand Bar Mining Company, a corporation organized and existing under the laws of the state of, that the contract made by and between the above named corporations, as party of the first part and party of the second part, respectively, under date of January 15, 1927, be surrendered, abrogated and rescinded, from and after said rescission, and that, in lieu thereof, this corporation execute and deliver to the said Sand Bar Mining Company a new contract, to take effect from the date of its execution and delivery, and containing such other, new, and additional terms as said corporation shall, after a conference between their respective agents, duly authorized, mutually agree upon; and the president and secretary of this corporation (or and, constituting a committee to represent this board), be and they are hereby authorized and directed to enter into negotiations with the board of directors, or any duly authorized committee of the board of directors of the said Sand Bar Mining

⁵ *Illinois Trust & Sav. Bank v. Pacific Ry. Co.*, 117 Cal. 332, 343, 49 Pac. 197.

⁶ *Temple St. Cable R. Co. v. Hellman*, 103 Cal. 634, 37 Pac. 530.

⁷ *Liebke v. Knapp*, 79 Mo. 22, 49 A. S. R. 212.

⁸ *First Presb. Ch. v. National State Bank*, 57 N. J. L. 27.

⁹ *Skinner v. Walter A. Wood Mowing & Reaping Mach. Co.*, 140 N. Y. 217, 35 N. E. 491, 37 A. S. R. 540.

¹⁰ *Grant v. Duluth, M. & N. Ry. Co.*, 66 Minn. 349, 69 N. W. 23.

¹¹ *Wallace v. Oceanic Packing Co.*, 25 Wash. 143, 64 Pac. 938; *East Rome Town Co. v. Browner*, 80 Ga. 258, 7 S. E. 273.

Company, or with any agent of said corporation, duly appointed and authorized by it, on behalf of said corporation, and upon such terms as they deem expedient, just and proper, rescind said former contract and make a new one; and the said president and secretary (or the said committee), are hereby given as full power and authority in the premises as if this board of directors were present, acting in its capacity, name and right as such; and they are hereby authorized and directed to execute and deliver in the name of and on behalf of this corporation, and under its corporate seal, all such necessary and proper instruments as may be necessary to carry out in full the purpose and intent of this resolution.

§ 806. Contracts Beyond the Power of the Corporation—Ultra Vires Contracts.—A corporation may not enter into a contract which is expressly prohibited by law or which is opposed to public policy. Thus, contracts in restraint of trade are no more enforceable than when made by private individuals.¹² So, also, is a contract unenforceable by which a public service corporation renders itself in any way unable to give a full and faithful performance of its services to the public.¹³ In many cases, it is not difficult to determine that a contract is not in any way connected with the purposes for which the corporation was created and is therefore invalid. Thus, a machine shop cannot contract to furnish ice to customers.¹⁴ A savings bank, not otherwise empowered, cannot make itself liable under a contract to keep bonds and securities safely.¹⁵ A religious corporation is not liable under a contract made by its trustees on its behalf for a steamboat excursion.¹⁶ Nor may a corporation, not specifically so authorized by its articles, enter into contracts of suretyship, even though its business in general be thereby increased.¹⁷

§ 807. Issuing or Circulating Paper Money Prohibited.—Corporations are usually prohibited by law from creating or issuing bills, notes, or other evidences of debt, upon loans or otherwise,

¹² *Distilling & Cattle Feeding Co. v. People*, 156 Ill. 448, 41 N. E. 188, 47 A. S. R. 200; *Diamond Match Co. v. Roeber*, 106 N. Y. 473, 13 N. E. 419, 60 A. S. R. 464.

¹³ *Doane v. Chicago City R. Co.*, 51 Ill. App. 353.

¹⁴ *Simmons v. Troy Iron Works*, 92 Ala. 427, 9 So. 160.

¹⁵ *Greeley v. Nashua Sav. Bank*, 63 N. H. 145.

¹⁶ *Harriman v. First Bryant Bap. Ch.*, 63 Ga. 186, 30 A. R. 117.

¹⁷ *Filon v. Miller Br. Co.*, 60 Hun 582, 15 N. Y. Supp. 57; *Davis v. Old Colony R. Co.*, 131 Mass. 258, 41 A. S. R. 221.

for circulation as money.¹⁸ The object of such a restriction is to prevent corporations by any device from carrying on the business of banking; or, in other words, to prevent formation of monied corporations. They are prohibited from lending their credit.¹⁹ No curb, however, is put up on the right to execute ordinary negotiable instruments for money borrowed.

§ 808. Contracts in Writing.—The general statute of frauds prescribing what contracts are not enforceable unless they are in writing applies to those made by corporations. If, in addition to those named in the statute, contracts relating to other matters are required by the articles of incorporation to be in writing, they must be so in order to be binding.²⁰ A statute or charter, however, which provides that “all contracts made by the corporation must be in writing” is to be construed to refer only to “executory contracts” or those involving matters of such importance that formal action is usually taken upon them, not to every slight transaction in the course of trade or conduct of the business.¹

It has been held that a transfer of the assets, good will, and property of a corporation may be effectually made by parol, where a writing is not expressly required by statute.²

§ 809. Signature of the Corporation to the Contract.—The by-laws generally prescribe the names of the officers to be signed to corporation contracts, usually those of the president and the secretary. A by-law, however, which merely states that all obligations “signed officially by the president and the secretary shall be binding on the corporation” does not limit the right of one of these officers or any other agent to negotiate and sign for the corporation, a contract to sign which he has been given due author-

¹⁸ California Civil Code, sec. 356; Idaho Comp. Stats. 1919, sec. 4753; Montana Rev. Codes 1921, sec. 5996. See statutory provisions of other states.

¹⁹ *Magee v. Mokelumne H. C. & M. Co.*, 5 Cal. 258, 259; *Smith v. Eureka Flour Mills Co.*, 6 Cal. 1, 7.

²⁰ *Relief Fire Ins. Co. v. Shaw*, 94 U. S. 574, 24 L. Ed. 291; *Henning v. United States Ins. Co.*, 47 Mo. 425, 4 A. R. 332.

¹ *Pixley v. Western Pac. R. Co.*, 33 Cal. 183, 91 A. D. 623; *Foulke v. San Diego & G. So. Pac. R. Co.*, 51 Cal. 365.

² *United Zinc Cos. v. Harwood*, 216 Mass. 474, 103 N. E. 1037, A. C. 1915B 948.

ity.³ The following is the best form in signing a contract on behalf of a corporation: "Pacific Peat Coal Co. By G. A. Colby, Pres." But "G. A. Colby, Pres. Pac. Peat Coal Co.," is equally effective.⁴

All that is necessary in order to hold the corporation is that it shall clearly appear from the instrument that it was the intention that the corporation should be bound. Thus, a promissory note in the form of "We promise to pay" and signed "Annie Kline Rikert, Pres. Stockton and Tuolumne Co. R. R. Co. Annie Rikert, Personally," binds the corporation;⁵ whereas, if the note read "I promise to pay" and there was but the one signature "Annie Rikert, Pres. Stockton and Tuolumne Co. R. R. Co.," the corporation would not be bound.⁶

The rule is, that when words which may be either descriptive of the person, or indicative of the character in which a person contracts, are affixed to the name of a contracting party, *prima facie*, they are descriptive of the person only; but the fact that they were not intended by the parties as descriptive of the person, but were understood as determining the character in which the party contracted, may be shown by extrinsic evidence; but the burden of proof rests upon the party seeking to change the *prima facie* character of the contract.⁷

There are many decisions which hold that the words agent, manager, trustee, treasurer and the like, affixed to the signature of the person who execute a simple contract, when the instrument itself does not clearly indicate that it was made on behalf of some one other than the signer, are at least *prima facie*, mere description of the person signing.⁸ It is now, however, quite gen-

³ Hawley v. Gray Bros. Artificial Stone Pav. Co., 106 Cal. 337, 39 Pac. 609.

⁴ Farmers & Mechanics Bank v. Colby, 64 Cal. 352, 28 Pac. 118.

⁵ McCormick v. Stockton & T. C. R. Co., 130 Cal. 100, 62 Pac. 267; Pacific Imp. Co. v. Jones, 164 Cal. 260, 128 Pac. 404.

⁶ Chamberlain v. Pacific Woolgrowing Co., 54 Cal. 103; Hobson v. Hassett, 76 Cal. 203, 18 Pac. 320, 9 A. S. R. 193.

⁷ Pratt v. Beaupre, 13 Minn. (Gill. 177) 187, 190; Rhone v. Powell, 20 Colo. 41, 36 Pac. 899; Lewis v. Mutual Life Ins. Co., 8 Colo. App. 368, 46 Pac. 621; Keeley Brewing Co. v. Neubauer Decorating Co., 194 Ill. 580, 62 N. E. 923; Griffin v. Union Savings & Trust Co., 86 Wash. 605, 150 Pac. 1128, A. C. 1917B 270.

⁸ Pershing v. Swenson, 58 Minn. 310, 59 N. W. 1084; Hobson v. Hassett, 76 Cal. 203, 18 Pac. 320, 9 A. S. R. 193; Barker v. Mechanic F. Ins. Co., 3

100 200 300 400 500 600 700 800 900 1000

Of the persons executing the instrument may be both a corporation and an individual, in which case the witness clause would be thus:

§ 814. Witness Clause for Corporation and Individual.

In Witness Whereof, The said New Era Printing Company, party of the first part, has, by its president and secretary, signed its name hereto and affixed its corporate seal hereunto, and the said party of the second part has affixed his signature and seal hereto, at the city of Washington, D. C., on this the 1st day of May, 1927.

NEW ERA PRINTING COMPANY.

By JAMES WILLARD,

President.

J. F. WESTON, Secretary.

J. B. PURVIS.

(Corporate Seal.)

(Seal.)

In the case of an agent other than an officer executing an instrument, and in the case of an officer executing an instrument in consummating a transaction outside the scope of his usual duties and powers, the witness clause should recite the existence of the resolution, or power of attorney, conferring the authority upon him, thus:

§ 815. Witness Clause for Agent of Corporation.

In Witness Whereof, The said New Era Printing Company, a corporation, by its agent, Henry Goodfellow, authorized and appointed hereunto, by resolution of its board of directors (a copy of which resolution certified by its secretary, under its corporate seal, is annexed hereto), has hereunto signed its name, at the city of Washington, D. C., on the 1st day of May, 1927.

NEW ERA PRINTING COMPANY.

By HENRY GOODFELLOW,

Agent.

§ 816. Annexation of Enabling Resolution.—By the annexation of a copy of the resolution appointing and authorizing the agent to act for the corporation, certified as a true copy by the secretary under the corporate seal, the authenticity of the instrument so executed would be placed beyond controversy.

§ 817. Promissory Notes.—Promissory notes should be executed in the name of the corporation. The following will be found a sufficient form for an ordinary corporate note:

CORPORATION PROMISSORY NOTE.

Washington, D. C., March 1, 1927.

\$500.

Six months after date, for value received, the New Era Printing Company, a corporation, promises to pay to the order of John Goode, the sum of five hundred dollars.

NEW ERA PRINTING COMPANY.

By JAMES WILLARD,

President.

A proper modification would adapt the above form to suit any and all circumstances, such as naming a rate of interest, place of payment, waiving demand and protest, etc.

A corporate note, with collateral security, might read as follows:

§ 818. Corporation Promissory Note With Collateral Security.

Washington, D. C., March 1, 1927.

\$10,000.

One year after date, the New Era Printing Company, a corporation, promises to pay to the order of John Rushing at the Safety and Security Bank of the city of Washington, D. C., the sum of ten thousand (\$10,000) dollars in gold coin of the United States, with interest from the present date until paid at the rate of six per cent per annum. And the said New Era Printing Company herewith deposits with the said John Rushing as collateral security for the due payment of the foregoing promissory note, two hundred shares of treasury stock owned by it, in two certificates, each representing one hundred shares, numbered respectively 15 and 16, said certificates standing in the name of James Knox, treasurer of the said New Era Printing Company, and endorsed by him in blank upon the back of each of said certificates.

And in the event that this note, or the interest thereon, shall not be paid when due, the said New Era Printing Company hereby appoints and constitutes the said John Rushing its attorney, in fact and irrevocable, with power of substitution, to sell at any time after this said notice, or any interest thereon is due and unpaid, with or without notice, and either at public or private sale, the whole or any part of said securities, the proceeds thereof to be applied to the payment of the said promissory note, any interest due thereon, and any commissions properly payable on the sales of said securities so sold, and any surplus remaining thereafter, either of cash or of the said securities, to belong to and be subject to the order of the said New Era Printing Company.

In Testimony Whereof, The corporate signature of the said New Era Printing Company is hereunto affixed by the president and treasurer, duly authorized thereto by a resolution of the board of directors of said com-

pany, passed at a regular meeting of said board, held February 23, 1927, a duly certified copy whereof is hereunto attached.

NEW ERA PRINTING COMPANY.

(Corporate Seal.)

By JAMES WILLARD,

Attest:

President.

J. F. WESTON, Secretary.

Attached to the above note should be a copy of the resolution referred to therein, certified by the secretary.

§ 819. Authorization to President and Secretary to Borrow Money and Secure Repayment Thereof. — The president and secretary may be authorized to borrow money and give security therefor by the following resolution:

RESOLUTION AUTHORIZING PRESIDENT AND SECRETARY TO
BORROW MONEY AND GIVE SECURITY THEREFOR.

Be It Resolved, That this corporation, the New Era Printing Company, borrow from the Safe and Security Bank, ten thousand dollars, to be repaid within one year with interest at seven per cent per annum until paid, payment of interest to be made in United States gold coin.

That this corporation secure the payment of its said promissory note by a delivery to Josiah Sigismund, president of said Safe and Security Bank, in pledge, twenty first mortgage bonds of the Crosstown Street Railway Company, of the face value of \$1,000 each, now the property, and in the possession of this corporation; that the said Josiah Sigismund, president of said bank, be, in writing, appointed and constituted the attorney of this corporation, irrevocably, with power of substitution and revocation, to sell, at any time after said note or interest or any part thereof, is due, without previous demand, and with or without notice, the whole or any part of said lands, at either public or private sale, at his discretion, and deliver the same to the purchaser thereof, in case of the non-payment of the said promissory note or the interest thereon, when due, and in such case, the proceeds of such sale to be applied to the payment of said debt, interest thereon, and all expenses or costs incurred, or paid by the said Safe and Security Bank, or by its president, the said Josiah Sigismund, the surplus, if any, to be held and paid to the order of this corporation.

And the president and secretary of this corporation jointly, are hereby authorized and directed, in its name and under its corporate seal, to execute its promissory note to said Safe and Security Bank for said sum of ten thousand dollars (\$10,000), and to deliver said bonds in pledge, upon the terms and conditions in this resolution specified, and an agreement and power of attorney in the usual form required in such cases by the said Safe and Security Bank, and to do any and all other acts and things necessary to carry into effect the purpose and intent of this resolution.

Attached to the note and power of attorney described in the last preceding form should be a certified copy of the resolution,

and the other matters pertaining to its adoption, entry, etc., as follows:

§ 820. Certificate to Power of Attorney.

I hereby certify that at a regular meeting of the board of directors of the New Era Printing Company, held at the office of said corporation on the 1st day of March, 1927, at the hour of 10 o'clock a. m., called and conducted according to the by-laws of said corporation, upon due, legal and timely notice, a quorum of said board being present and voting thereon, it was moved, seconded, and unanimously resolved as follows: (Here insert the resolution.)

That the proceedings of said meeting pertaining to the adoption of said resolution, including the said resolution, have been duly entered in the minute book of directors' meetings of said corporation and attested by the president and secretary thereof; that the same has never been revoked, but remains in full force and effect; that the undersigned was, at the date of said meetings, and now is the duly elected, qualified and acting secretary of said corporation, and that the authority conferred by said resolution upon the president and secretary of said corporation has not been heretofore exercised, and that no money has been heretofore borrowed pursuant thereto.

J. F. WESTON,
Secretary.

Dated May 10, 1927.

§ 821. Resolution Conferring General Power to Borrow Money and Execute Notes.

Resolved, That the president and secretary be and they hereby are authorized and empowered to borrow from the Bank from time to time such sums of money as may be required for the purposes of this corporation, and

Further Resolved, That the president and secretary be, and they hereby are authorized and empowered as evidence of such indebtedness, to make, execute and deliver to said bank, the promissory note or notes of this corporation in such amounts and at such rates of interest and with such maturities as they may be advised, and to subscribe the corporate name and affix the corporate seal to the notes aforesaid.

§ 822. Blue Sky Permit Authorizing Sale of Notes.

State Corporation Department of the State of California.

In the matter of the application of

PACIFIC COAST SHIPBUILDING COMPANY

for a certificate authorizing it to sell its securities.

Pursuant to its application filed herein June 14, 1926, Pacific Coast Shipbuilding Company is permitted to sell and issue to The Tillotson &

Wolcott Company of Cleveland, Ohio, promissory notes not exceeding in their par or face value \$750,000, of that certain issue described in said application, to be dated May 1, 1926, to bear interest at the rate of 7 per cent per annum, and to mature in three installments of \$250,000 each respectively on May 1, 1927, November 1, 1927, and May 1, 1928.

This permit is issued upon the following conditions:

(a) That said notes shall be substantially in the form of note set forth in and made a part of the draft of first mortgage or deed of trust filed with said application and shall be executed, certified and issued in accordance with the terms of said mortgage or deed and not otherwise, and shall be secured by a mortgage or deed of trust substantially in the form of said draft thereof.

(b) That prior to the sale or issue of any of said notes said mortgage or deed of trust shall be duly executed and acknowledged as a mortgage or deed of trust of real property and as a mortgage of personal property and as so executed and acknowledged shall be recorded or indexed in conformity with the provisions of Section 4135-b of the Political Code of the state of California as a deed or deeds of trust, as a mortgage of real property and as a mortgage of personal property in the office of the county recorder of the county of Contra Costa, state of California, and as a mortgage of personal property in the office of the county recorder of the city and county of San Francisco, state of California; and that said indenture as so executed and recorded shall be a first lien and charge upon all of the property thereby mortgaged or transferred in trust, subject only to any taxes now a lien thereon, the payment of which is not delinquent.

(c) That said notes shall be sold only for cash, lawful money of the United States, so as to net said applicant not less than 92 per cent of the par or face value thereof.

(d) That the proceeds arising from the sale of said notes shall be expended for the certain purposes and in accordance with the provisions of that certain contract made April 23, 1926, by and between said applicant and The Tillotson & Wolcott Company, a copy of which is filed with said application, or with any modification thereof first approved in writing by the commissioner of corporations.

(e) That this permit shall not be effective for any purpose unless and until the federal capital issues committee shall determine that the issue or sale of the securities herein authorized to be issued is compatible with the national interest.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated:

(Seal.)

.....

Commissioner of Corporations.

§ 823. **Miscellaneous Corporate Contracts.**—The following forms are such as are used between individuals, not being peculiar to corporations. But as transactions between corporations, and

between corporations and individuals, frequently involve the subjects of these forms, these forms are here included. They may be easily adapted to other dealings:

§ 824. Bill of Sale. (Corporation to Individual, With Guarantee of Title.)

Know All Men by These Presents, That the New Era Printing Company, a corporation, duly organized under the laws of the state of, in acknowledgment of the sum of two thousand dollars (\$2000) to it paid by John Dickson, the receipt whereof is hereby acknowledged, hereby sells, transfers, and assigns to the said Dickson the following goods and chattels:

All the printing presses, type metal, chases, faces of type, and linotype machines now in the printing office of said corporation at its place of business, at No. 50 Printing House Square, in the city of Washington, District of Columbia, particularly inventoried and described in the annexed schedule.

To have and to hold, all and singular the said goods and chattels to the use and benefit of the said Dickson, his heirs, personal representatives, and assigns.

And the said corporation hereby covenants with the said Dickson that it is the lawful owner of said goods and chattels; that the same are free from all liens; that it has a perfect title to, and a right to sell, transfer, and assign the same, and that it will warrant and defend the same against the lawful claims and demands of all persons whatsoever.

(Witness clause, signatures, and seal.)

(The schedule referred to should be annexed.)

§ 825. Assignments of Patents.—Assignments of patents are frequently made from inventors and assignees of inventors to corporations. The following form contains no acknowledgment nor do the rules of the patent office where such assignments are recorded require them to be acknowledged. An acknowledgment before a notary public or some other officer having a seal is the easiest and most satisfactory way of settling any question that may arise as to the genuineness of the signature.

§ 826. Assignment of Patent by an Individual to a Corporation.

Whereas, I, John Dickson, of the city of Washington, District of Columbia, did, on the 1st day of May, 1926, obtain letters patent of the United State for an improvement in type cleaners, to wit: letters patent numbered 786,320, bearing date of said 1st day of May, 1926; and, whereas, I,

the undersigned, am the sole owner of said patent, and of all rights under the same; and, whereas, the New Era Printing Company, a corporation duly organized and doing business under the laws of the state of is desirous of acquiring ownership and entire control of my entire interest in said patent;

Now, Therefore, To all whom it may concern, be it known, that for and in consideration of the issue to me, or to my order, by said corporation, of five hundred shares of its capital stock (of which five shares were heretofore issued to me) the receipt of certificates representing all of said stock, amounting to the par value of fifty thousand dollars (\$50,000), is hereby admitted, I have this day sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said New Era Printing Company the entire right, title, and interest in and to the said improvement in type cleaners, and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said New Era Printing Company for its own exclusive use and benefit, and for the use and benefit of legal representatives, successors, and assigns, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and note not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal, at Washington, D. C., this 1st day of May, 1927.

(Seal.)

JOHN DICKSON.

(Signatures of attesting witnesses or acknowledgment in usual form.)

Assignment of a patent from one corporation to another, or from a corporation to an individual would be in the same form as the above, with but slight modification.

§ 827. Assignments of Contracts.—In the transaction of corporate business, contracts are frequently made in the names of individuals, to be assigned afterward to a corporation. The assignment may be elaborate and formal, or it may be simply an endorsement on the back of the contract. Both forms are found below. The longer form might be attached to the contract if the latter were in writing.

ASSIGNMENT ENDORSED UPON CONTRACT.

For a valuable consideration, the receipt whereof is admitted, I hereby assign and transfer to the New Era Printing Company, a corporation, the within contract, and all the rights, privileges, and obligations thereunder as therein set forth.

(Seal.)

JOHN DICKSON.

Witness to signature: J. F. WESTON,

Secretary New Era Printing Company.

Dated October 15, 1927.

ASSIGNMENT OF CONTRACT—INDIVIDUAL TO CORPORATION.

Know All Men by These Presents, That for and in consideration of the issue by the New Era Printing Company, a corporation, organized and doing business under the laws of the state of, of certificates for five hundred shares of its capital stock, of the par value of fifty thousand dollars (\$50,000) full paid, to the undersigned, John Dickson, the receipt of which said certificates is hereby admitted, I, John Dickson, hereby sell, assign, and transfer to the said corporation all and singular my right, title, and interest of every kind in and to a certain contract, a copy of which is hereunto annexed, and by this reference made a part of this instrument, entered into on the 1st day of March, 1927, between one Nelson Dodd of Washington, D. C., and the undersigned, whereby the said Dodd covenanted and bound himself to execute and deliver to the undersigned a twenty-year lease of certain real estate in said annexed contract described, in consideration of payments then and there made to the said Nelson Dodd as specified in said annexed contract specified and admitted; the said corporation to hold, enjoy, and exercise the exclusive right to demand, and, under its terms to enter into the possession and occupancy of said premises and real estate for the full term in said contract mentioned.

Witness my hand and seal, at Washington, D. C., this
March 1, 1927.

(Seal.)

JOHN DICKSON.

(Acknowledgment in the usual form.)

§ 828. Acknowledgment of an Instrument Executed by a Corporation.—The certificate of acknowledgment of an instrument executed by a corporation may be substantially in the following form:

ACKNOWLEDGMENT.

State of, County of

On this day of, 19 . . ., before me the subscriber (here insert title of officer), appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation) of (describing the corporation), and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A. B. acknowledged said instrument to be the free act and deed of said corporation.

(Signature and title.)

CHAPTER XLVI.

SALES OF CORPORATE PROPERTY.

- § 829. Power to Alienate Property.
- § 830. Transfer of Entire Property of Corporation.
- § 831. Right of Majority of Stockholders to Sell Out.
- § 832. Who May Object to the Sale.
- § 833. Disposal of Property of Quasi Public Corporations.
- § 834. Disposal of Property of Public Utilities.
- § 835. Conveyance of Corporation, by Whom Executed.
- § 836. Resolution of Stockholders Authorizing Sale of Entire Business.
- § 837. Agreement for Sale of Entire Business.
- § 838. Sale of Real Estate by Corporation.
- § 839. Resolution Authorizing Payment for Property.
- § 840. Conveyance of Real Estate in Fee Simple by Corporation.

§ 829. Power to Alienate Property.—A corporation capable of taking and holding property has the right of disposing of it as fully as natural persons, except so far as it is restrained by its charter, or by statute, or public policy.¹ The power to dispose of corporate property usually rests with the directors, or those whom the directors authorize.² Ordinarily, the stockholders as such have no authority except where a disposal of the corporate property as a whole is involved. In such case statutes are common which require the consent of a certain proportion of the stockholders.³

§ 830. Transfer of Entire Property of Corporation.—It is a common statutory provision that no sale, lease, assignment, transfer or conveyance of the business, franchise and property, as a whole, of any corporation, is valid without the consent of stockholders thereof, holding of record at least two-thirds of the issued

¹ Warfield v. Marshall County Canning Co., 72 Iowa 666, 34 N. W. 467, 2 A. S. R. 263; Benbow v. Cook, 115 N. C. 324, 20 S. E. 453, 44 A. S. R. 454; South Pasadena v. Pasadena Land, etc., Co., 152 Cal. 579, 93 Pac. 490; Hearst v. Putnam Min. Co., 28 Utah 184, 77 Pac. 753, 107 A. S. R. 698, 66 L. R. A. 784.

² Buell v. Buckingham, 16 Iowa 284, 85 A. D. 516; Gashwiler v. Willis, 33 Cal. 11, 91 A. D. 607.

³ California Civil Code, sec. 361a.

capital stock of such corporation; such consent to be either expressed in writing, executed and acknowledged by such stockholders, and attached to such sale, lease, assignment, transfer or conveyance, or by vote at a stockholders' meeting of such corporation called for that purpose.⁴

A transfer of the property without a transfer of the business does not, ordinarily, require the consent of the stockholders. It is only where all three of the elements of the corporation, "the business, franchise, and property," are transferred that such consent is necessary. Thus, a corporation organized to conduct racing may, by the action of its directors alone, sell its only racetrack and its equipment, it still being possible to continue in business by acquiring other property.⁵

Since a corporation holds its property subject to the payment of the corporate debts, when a corporation sells or transfers its entire property to a purchaser, knowing the fact, the latter is chargeable with knowledge that the property is subject to the corporate debts, and that equity will, in proper cases, allow the corporate creditors to follow the property into the hands of the purchaser for satisfaction of their claims.⁶

§ 831. Right of Majority of Stockholders to Sell Out.—The majority in interest in a corporation have the right to rule within reasonable bounds, and while they have no right, arbitrarily or oppressively, to close out the corporation, and sell all of its property to their own advantage, yet they are not compelled to continue an unprofitable business, nor to pay the minority more than their stock is worth for the privilege of closing out the corporation. The mere fact that all the stockholders in a corporation have not consented to a sale of all of its property by the majority is not ground for setting the sale aside, regardless of the consequences.⁷ So far as the right of a nonassenting stockholder is concerned, he is bound by the action of the holders of the majority of the stock consenting to the transfer, in the absence of fraud in the transaction.⁸ Courts, however, do not hesitate to set aside a

⁴ California Civil Code, sec. 361a.

⁵ *Shaw v. Hollister Land & Imp. Co.*, 166 Cal. 257, 135 Pac. 965.

⁶ *Barber v. Morgan*, 89 Conn. 583, 94 Atl. 984, A. C. 1916E 102.

⁷ *Tanner v. Lindell Ry. Co.*, 180 Mo. 1, 79 S. W. 155, 103 A. S. R. 534.

⁸ *Graham v. Pasadena Land & W. Co.*, 152 Cal. 596, 93 Pac. 498.

transfer of corporate property made with the consent of a majority of the stockholders in fraud of the rights of a dissenting minority.⁹

§ 832. **Who May Object to the Sale.**—The vendee of all of the property of a corporation cannot avoid the sale on the ground that all the stockholders had not assented thereto.¹⁰ So, also, a stockholder who takes part in making and perfecting a sale of the corporate property and who afterward ratifies such sale will not be heard to complain that the property sold for less than its value.¹¹ It has been held that inasmuch as creditors cannot be forced to submit to a change of debtors, a transfer of one corporation to another in consideration of the latter's assumption of debts of the former is illegal as against its creditors, and cannot be upheld on the ground that the stockholders and officers of the two corporations are the same, and their remedy against the transferee is as ample as it would have been against the transferrer had no transfer been made.¹² And it has also been held that a transfer of all of its assets which has the effect of terminating its regular business and which is made for that purpose is illegal as against creditors of the corporation.¹³

§ 833.—**Disposal of Property of Quasi-Public Corporations.**—The general principle that corporations may sell their real or personal property, at their pleasure, is subject to exceptions from the nature and purposes of some of them, and from the duties and liabilities imposed on them by their charters. Corporations for public objects, to which large powers are given to enable them to accommodate the public, and upon which public duties are imposed for the benefit of the community, are generally held to be disabled to do any act which would amount to a renunciation of

⁹ *Wheeler v. Abilene Nat. Bank Bldg. Co.*, 159 Fed. 391, 89 C. C. A. 477, 14 A. C. 917, 16 L. R. A. (N. S.) 892; *Koehler v. St. Mary's Brewing Co.*, 228 Pa. St. 648, 77 Atl. 1016, 139 A. S. R. 1024.

¹⁰ *Stokes v. Detrick*, 75 Md. 256, 23 Atl. 846.

¹¹ *Manufacturers' Sav. Bank v. Big Muddy Iron Co.*, 97 Mo. 38, 10 S. W. 865.

¹² *Cole v. Millerton Iron Co.*, 133 N. Y. 164, 30 N. E. 847, 28 A. S. R. 615.

¹³ *Florsheim Bros. Dry Goods Co. v. Wettermark*, 10 Tex. Civ. 102, 30 S. W. 505.

their duty to the public, or which would directly and necessarily disable them from performing it. And this principle includes an alienation of their property.¹⁴

§ 834. **Disposal of Property of Public Utilities.**—There are, in the different states, various statutory regulations prescribing methods for selling or encumbering the property of corporations of different kinds. In several states, practically the entire management of public utility corporations is subject to the dictation of a state commission. Before steps are taken, therefore, to mortgage, lease, or sell the property of such a corporation, the special provisions of the law relating to the particular corporation should be thoroughly studied and the procedure prescribed faithfully followed.

§ 835. **Conveyance of Corporation, by Whom Executed.**—A deed of conveyance by a corporation must be executed in the corporate name.¹⁵ Thus, a deed executed by the president and cashier of a corporation in their individual names, describing themselves as such president and cashier, but not signed by the name of the corporation, is not the deed of the corporation.¹⁶ However, it is well settled that, where it appears in the body of the instrument that the corporation is the grantor, the instrument is well executed by the corporation if signed by the proper officer or officers, with his or their official title or titles.¹⁷

So a deed is executed by a corporation and is not the mere act of its officers, where the instrument on its face purports to be the deed of the corporation, and the testimonium clause recites that the company has caused its corporate seal to be attached and the deed to be signed by its president and secretary, and the corporate seal is in fact attached, and the president and secretary have signed in their official capacities.¹⁸

¹⁴ 7 Ruling Case Law 572.

¹⁵ *Hatch v. Barr*, 1 Ohio (1 Ham.) 390; *Warden v. South Pasadena Realty, etc., Co.*, 178 Cal. 440, 174 Pac. 26; *Norris v. Dains*, 52 Ohio St. 215, 39 N. E. 660, 49 A. S. R. 716.

¹⁶ *Bank of Metropolis v. Guttschlick*, 14 Pet. (39 U. S.) 19, 10 L. Ed. 335.

¹⁷ *Nolen v. Henry*, 190 Ala. 540, 67 So. 500, A. C. 1917B 792; *Fond du Lac v. Otto*, 113 Wis. 39, 88 N. W. 917, 90 A. S. R. 830.

¹⁸ *In re New Memphis Gaslight Co. Cases*, 105 Tenn. 268, 60 S. W. 206, 80 A. S. R. 880.

§ 836. Resolution of Stockholders Authorizing Sale of Entire Business.

Be It Resolved, By the stockholders of the New Lead Mining Company, in meeting assembled, that the board of directors of said corporation be, and they are hereby specially authorized and directed to sell, and by sufficient and suitable instruments to convey in fee simple all the real estate of said New Lead Mining Company, and every interest therein and right pertaining thereto, in fee simple, to the Sand Bar Mining Company, a corporation; also to sell and deliver to the said Sand Bar Mining Company all the personal property of the said New Lead Mining Company; and we, the said stockholders, hereby consent to each and all of the matters hereinabove set forth, and hereby ratify and confirm the same, and all else that said board of directors shall lawfully do in the premises.

§ 837. Agreement for Sale of Entire Business.

Agreement made this 16th day of July, 1927, between Holt Iron Company, a corporation of Concord, Ohio, hereinafter called vendor, party of the first part; and Carter Fixture Company, a corporation of Dayton, Ohio, hereinafter called purchaser, party of the second part.

Said parties, each in consideration of the agreements of the other herein stated, and vendor in consideration of the partial payment made to it by purchaser, and hereinafter stated, mutually agree as follows:

Vendor agrees to sell, convey, transfer, and deliver to purchaser at the price and upon the terms and conditions hereinafter stated, all vendor's manufacturing business and properties, including all vendor's real estate, plants, furnaces, structures, machinery, tools, and appliances (including manufactured books, accounts, and data of costs, but excluding books of account of the business other than those containing accounts thereof, since July 1, 1927); all materials and supplies and all manufactured product and material in process of manufacture, and all patents, processes, inventions, rights under, and interests in and claims to patents, processes, inventions (including all the "patent vibrator" and other inventions and patents relating in any way to car wheels), trademarks, trade rights, and trade names of every sort and kind to it belonging and the good will of said business, and the exclusive right to use the name "Holt Iron Company" in carrying on said business, and all leaseholds, contract, and other rights, privileges, and franchises used or of use in or in connection with, or acquired for, said business, and all gas, power, light, and other tributary properties, being substantially all the properties of every kind and whatsoever situate of vendor, excepting cash, shares of stock of the Maine Foundry Company (which company is to be permitted to continue business under that name), bills and accounts receivable.

The sale and transfer of the properties hereinbefore described is to be as of July 1, 1927, and from that date it is understood that the business

and properties aforesaid have been and will be operated for account and at the expense of purchaser.

Deeds, bills of sale, and other instruments of transfer of said properties shall be delivered at the office of Charles Samuels, in the city of Dayton, on the 1st day of September, 1927, or earlier in case transfers and examinations of title and the requisite corporate action shall be ready earlier, and such transfers and the instruments thereof shall be supported by such corporate action, and action of individual stockholders, of vendor, as shall be requisite to make such transfers wholly legal and effective, which action vendor shall cause to be taken at the earliest moment.

At the time of such transfer vendor will cause to be executed, and delivered to purchaser an agreement not to engage in the tire, car wheel, or ring manufacturing or selling business or any branch thereof in the United States or Canada (except in connection with purchaser), for the period of ten years, executed by James Smith, president of vendor, and vendor will use its best efforts to cause a like agreement to be so executed and delivered by each of the following: Howard Iron Company and Eastern Manufacturing Company.

Immediately after the transfer by vendor to purchaser as hereinbefore provided, vendor will proceed with the liquidation of its business and properties and distribution thereof among its stockholders, and will thereupon be dissolved as a corporation, and will notify purchaser forthwith of such dissolution.

The purchase price hereinbefore referred to is four million three hundred thousand dollars (\$4,300,000), and, in addition thereto, the book value (but not exceeding the cost paid by purchaser) of materials, supplies, finished products, and materials in process of manufacture, which vendor had on hand at the close of business on June 30, 1927, and purchaser shall have access to vendor's books and works prior to transfer hereunder in order to ascertain or verify the exact amount of such materials, supplies, product, and material in process of manufacture. Purchaser shall also have access to the books of accounts, records, and papers retained by vendor after transfer pursuant thereto, for all entries and other data useful for the conduct of the business by purchaser.

Said price is payable as follows:

\$500,000 thereof on the execution and delivery of this agreement and vendor hereby acknowledges receipt thereof from purchaser.

\$500,000 thereof on the delivery of deeds and instruments of transfer as hereinbefore provided.

The balance of fixed purchase price in equal installments of \$825,000 each, one, two, three, and four months respectively, after the delivery of deeds and instruments of transfer.

But purchaser shall have the right to anticipate any and all payments in whole or in part. Such deferred payments shall be secured by the deposit with Mercantile Trust Company of par value bonds of the issue which purchaser proposes to make and secure, or cause to be made and secured, by first mortgage (which bonds and mortgage shall be in the form

usual in such cases) upon the properties so to be transferred to it by vendor, amounting in aggregate principal amount to the same proportion of the whole issue, as the amount of the deferred payments bears to \$4,300,000; such deposit to be accompanied by appropriate documents providing for the retention of such bonds as security for such deferred payments (proportional amounts to be released as installments are paid) and for the usual remedies in case of default; but this deposit of bonds shall not in any way discharge or diminish the absolute liability of purchaser to pay every installment of the purchase price at the time herein fixed therefor.

The price of materials, supplies, product, and materials in process shall be paid within thirty days after the determination of the amount thereof, which determination shall be made as rapidly as possible.

All installments of the purchase price (including that for materials, supplies, and products) shall carry interest at five per cent from July 1, 1927, to date of actual payment.

The properties of vendor so to be transferred to purchaser shall be free and clear of all incumbrance and indebtedness whatsoever, as of July 1, 1927, excepting only the contracts hereinafter agreed to be assumed by purchaser; and the full sum of \$28,000 has been, or will be paid by vendor toward the cost of the additions to plant and new construction now going on. And all mills, machinery, tools, and appliances of every kind herein agreed to be transferred shall be free and clear of all liability to pay royalty or other liability or incumbrance of any kind to patent owners or licensees. Vendor will also pay all taxes on its properties so to be transferred for the current tax fiscal year.

Purchaser agrees to buy from vendor the properties hereinbefore described, and to pay therefor the price hereinbefore stated, at the times hereinbefore fixed, and further agrees to assume and perform the outstanding contracts of vendor listed in the schedule hereto annexed marked A, 1, 2, and 3 and all vendor's obligations under them or any of them. As to any omitted contracts mentioned in page 3 of schedule A-3, purchaser will assume any such, provided they are reasonable in character and made in the ordinary course of business.

This agreement shall be binding upon and enforceable by the successors and assigns of the parties hereto respectively.

In Witness Whereof, Hereunto in duplicate the said parties have set their seals, and the signatures of their presidents, respectively, the day and year first above written.

(Seal.)

By.....

President.

Attest:

(Seal.)

By.....

President.

.....

Secretary.

§ 838. Sale of Real Estate by Corporation.—In its resolution, the board of directors may authorize the president and the secretary to effect a sale, thus:

**RESOLUTION AUTHORIZING SALE OF REAL ESTATE BY
PRESIDENT AND SECRETARY.**

Be It Resolved, That the president and secretary of the corporation be, and they are hereby authorized and directed, jointly but not severally, to sell for the best price, or on the best terms, available all that portion of the real estate of this corporation described as follows:

(Here insert description.)

Also the following described personal property: (Specify.)

And they are jointly further directed and authorized to receive and accept for all or any parcel or article of said property, payment in money, or property, and to consummate all such sales by delivery of personal property and executing and delivering good and sufficient conveyances under their hands and the seal of this corporation.

Authority to accept delivery and conveyance of property, and upon such delivery or conveyance to make payment therefor at a specified price, is in legal effect authority to purchase property, and may be in the following form:

§ 839. Resolution Authorizing Payment for Property.

Whereas, On the 1st day of March, 1927, the Cross-town Street Railway Company, a corporation organized and existing under the laws of the state of, by its board of directors, offered to this corporation that certain real estate situate, lying and being in the city of, state of, described as follows: (Here insert description); also ten of its first mortgage bonds of \$1,000 each, bearing interest at five per cent, for the aggregate sum of \$25,000, and it being deemed to the interest of this corporation that said offer be accepted;

Therefore, Be It Resolved, By the board of directors of the Enterprise Investment Company, that it purchase and accept conveyance and delivery from said Cross-town Street Railway Company, the above described real and personal property, and all instruments duly executed which are, or may be, necessary for the transfer thereof to this corporation. And the president and secretary of this corporation are hereby authorized and directed to purchase and accept delivery of said personal property and all such good and sufficient conveyances and instruments in writing, properly executed, conveying and transferring said real property to this corporation; and they are hereby also directed and authorized upon receipt of said conveyances and instruments, and said personal property, to pay to the said Cross-town Street Railway Company, or to its agent duly authorized, said sum of twenty-five thousand dollars (\$25,000), gold coin of the

United States, of the moneys and funds of this corporation, in full payment and settlement therefor.

§ 840. Conveyance of Real Estate in Fee Simple by Corporation.

This Indenture, Made the 1st day of March, A. D. 1927, between the New Era Printing Company, a corporation organized and doing business under the laws of the state of, party of the first part, and John Dickson, of the city of Washington, in the District of Columbia, party of the second part;

Witnesseth: That the said party of the first part, in consideration of the sum of five thousand dollars (\$5,000) lawful money of the United States, paid to it by the said party of the second part, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, releases and conveys to the said party of the second part, his heirs and assigns forever, all that lot and parcel of land situate in the city of Washington, District of Columbia, particularly described as follows:

(Here insert particular description.)

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold, the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part hereby covenants with the said party of the second part as follows:

First: That the party of the first part is seized of the said premises in fee simple and has a good right to convey the same.

Second: That the party of the second part shall quietly enjoy the said premises.

Third: That the said premises are free from encumbrances.

Fourth: That the party of the first part will execute or procure any further necessary assurance of the title to the said premises.

Fifth: That the party of the first part will forever warrant the title to said premises.

In Witness Whereof, The said party of the first part the New Era Printing Company, has affixed hereunto its corporate seal, attested by its secretary, these presents to be signed, acknowledged and delivered in its name and on its behalf by its president, on the day and year first above written.

NEW ERA PRINTING COMPANY.

(Corporate Seal.)

By JAMES WILLARD,

Attest:

President.

J. F. WESTON, Secretary.

(Acknowledgment.)

In many states, some of the above warranties and covenants are implied by law, but no harm can be done by their insertion in the conveyance.

CHAPTER XLVII.

LEASES OF CORPORATE PROPERTY.

- § 841. Power of Corporation to Lease Its Property.
- § 842. Who May Execute Lease.
- § 843. Resolution Authorizing Lease of Mining Property.
- § 844. Lease of Mining Property.
- § 845. Lease of Oil Lands.
- § 846. Lease of Plant.
- § 847. Railroad Lease.

§ 841. **Power of Corporation to Lease Its Property.**—So far as private corporations are concerned, the power to lease is an incident of ownership.¹ And when a corporation is expressly authorized to hold real estate, the right to hold the property includes the right to lease it so as to make it produce income.² And so the term “otherwise convey,” contained in a statute providing that every private corporation, as such, has power to hold, purchase, sell, mortgage, or otherwise convey such real and personal estates as the purposes of the corporation shall require, empowers a corporation to lease its land.³

There is some conflict of authority upon the power of a private corporation, at common law, to lease for a term of years all of the property used in the transaction of its business.⁴ It has been held that a company chartered for the purpose of manufacturing cannot lease its entire property and so defeat the purpose for which its charter was granted.⁵

§ 842. **Who May Execute Lease.**—Under the power of the board of directors to manage and control the affairs of the corporation, they may exercise the power of the corporation to lease its property.⁶ However, it has been held that the directors of a

¹ Coal Creek Min. & Mfg. Co. v. Tennessee Coal, Iron & R. Co., 106 Tenn. 651, 62 S. W. 162.

² Nye v. Storer, 168 Mass. 53, 46 N. E. 402.

³ Starke v. J. M. Guffey Petroleum Co., 98 Tex. 542, 86 S. W. 1, 4 A. C. 1057.

⁴ Small v. Minneapolis Electro-Matrix Co., 45 Minn. 264, 47 N. W. 797.

⁵ Ardesco Oil Co. v. North American Oil Co., 66 Pa. 375.

⁶ Beveridge v. New York Elevated R. Co., 112 N. Y. 1, 19 N. E. 489, 2 L. R. A. 648; Seal of Gold Min. Co. v. Slater, 161 Cal. 621, 120 Pac. 15.

manufacturing corporation cannot lease the entire property of the corporation for a term of years against the protest of one owning a majority of the stock.⁷ It is a common statutory provision that no sale, lease, assignment, transfer, or conveyance of the business, franchise and property, as a whole, of any corporation, is valid without the consent of a certain proportion of the stockholders.⁸ Where a lease does not cover the whole of the corporate property, no question arises as to the application of such a statute.⁹

§ 843. Resolution Authorizing Lease of Mining Property.

—The following resolution contemplates a lease of mining property:

Resolved, That this corporation, the New Lead Mining Company, lease to the Sand Bar Mining Company, a corporation organized and existing under the laws of the state of, for the term of twenty years from and after the 1st day of June, 1927, all of its real estate, mining claims, plant, and appurtenances situate in the county of, in the state of, Said real estate, mining claims and appurtenances are as follows: (Here insert description.)

And said plant consists of machinery and appliances for working and developing said mining claims, attached to the soil, specifically described as follows: (Here specify.)

The yearly rental for all said property above described, real and personal, shall be \$5,000, payable in quarterly installments of \$1,250 each. And said lease shall impose upon the said Sand Bar Mining Company the following terms and conditions, to wit: It shall, at its own cost and expense, use, operate and keep in good repair all of said property, etc. (inserting all the undertakings on the part of the lessee).

And the president and secretary of this corporation, jointly, are hereby authorized and directed on behalf of this corporation, in its name, and under its seal, to make, execute, acknowledge and deliver an instrument in writing, leasing said property to the said Sand Bar Mining Company for the term of twenty years upon the terms as to rent, and subject to the covenants, undertakings and conditions above set forth.

§ 844. Lease of Mining Property.—A lease of mining property may be as follows:

⁷ *Cass v. Manchester Iron & S. Co.*, 9 Fed. 640. See, also, *Rogers v. Nashville C. & St. L. Ry. Co.*, 91 Fed. 299, 322, 33 C. C. A. 517.

⁸ California Civil Code, sec. 361a. As to application of such a statute to a corporation organized before its enactment, see *Allen v. Francisco Sugar Co.*, 92 N. J. Eq. 391, 110 Atl. 37.

⁹ *Shaw v. Hollister Land & Imp. Co.*, 166 Cal. 257, 135 Pac. 965; *Seal of Gold Min. Co. v. Slater*, 161 Cal. 621, 120 Pac. 15.

This lease and agreement made and entered into this day of, A. D. 1927, by and between Sherman Mining and Reduction Company, a corporation organized and existing under and by virtue of the laws of the state of California, lessor, and J. C. Blake, lessee, witnesseth:

That Whereas, The lessor is the owner and possessor of lode mining claim, situate, lying and being in the mining district, in the county of Humboldt, state of Nevada;

Now, Therefore, In consideration of the covenants and agreements hereinafter contained, the said lessor does by these presents lease and demise unto the said lessee, for a term of six (6) years, from and after the date hereof, the hereinabove described mining property, together with all the rights and franchises hereunto belonging, or in anywise appertaining.

The said lessee shall have the privilege, and it is hereby granted to him, his agents, employees and representatives, to enter upon the said above described premises, and every part thereof, and to work and operate the same, extract, reduce, ship and sell, or to reduce, treat, ship and sell the ores and values contained in said mine, and which may be now situate upon the surface thereof.

The said lessee during the life of this lease shall work and employ not fewer than men during the season, Sundays and holidays excepted, in each year, that is between the months of and, both inclusive, in the operation and development of said premises, and in extracting, shipping, selling and treating the ores therein contained and situated thereon.

The said lessee shall do and perform with each of said men, not fewer than fifteen (15) shifts of work each and every month during the working season throughout the life of this lease.

Any and all work done in and upon said premises during the life of this lease shall be done in a first-class manner, miner fashion, and in such manner as may be necessary to the proper preservation of said property and compatible with economical mining.

At all times and at all places in said mine, when and where it may be necessary, the said lessee shall keep the same well timbered, to make the underground workings safe and to prevent the same from caving.

All of said workings shall at all times and all places be kept clear of loose rock and earth.

Any and all tunnels, shafts, drifts, or winzes and other workings shall be not less than six and one-half by three and one-half feet in the clear.

That at all times during the life of this lease, the lessor, its agents or employees, may enter upon and into said property and all parts thereof for the purpose of inspection, with a view of ascertaining whether or not the terms and conditions hereof are being fulfilled and carried out.

From and out of the values obtained from the ores so extracted, and which may be found in or upon said premises, and reduced, treated, sold, or shipped, the said lessee shall pay to the said lessor per cent of the gross proceeds thereof. A duplicate of all mill or smelter returns shall be furnished by the mill owner, or by the owner of the smelter, to the

said lessor; the said lessee shall keep the books of account, showing the amount of ore shipped, sold, or treated, and the amount of money received from the sale of the ores or the values extracted therefrom, and said books of accounts shall be open at all reasonable times to the said lessor and its representatives.

At the termination of this lease, the said lessee shall deliver and return to said lessor the complete, full, and peaceful possession of said above-described premises, and every part thereof, in good condition, and the workings in and upon said premises, ready for work and operation, without further notice or demand.

Upon any violation of the conditions, covenants, and agreements hereinabove set forth, this lease, at the option of the said lessor, shall expire, and said premises, and all improvements thereon, and the appurtenances thereto appertaining, shall be forfeited to the lessor, and his agents, employees, and representatives may, after demanding possession in writing, enter upon said premises, and every part thereof, and dispossess the said lessee, his employees, agents, and representatives, with or without process of law, and without force.

In Witness Whereof, The said lessor and the said lessee have executed this instrument, the day and year first above written.

SHERMAN MINING AND REDUCTION COMPANY.

By H. L. BRADY, President.

By M. R. RENTOR, Secretary.

J. C. BLAKE.

§ 845. Lease of Oil Lands.

This Indenture, Made and entered into this 18th day of December, in the year one thousand nine hundred twenty-six, between Duryea Oil Company, a corporation formed and existing under the laws of the state of California, hereinafter called the lessor, and Dominion Oil Company, a corporation formed and existing under the laws of the state of California, hereinafter called the lessee,

Witnesseth: That for and in consideration of the sum of ten dollars (\$10) paid by said lessee to said lessor, the receipt whereof is hereby acknowledged, and for and in consideration of the covenants, rents, and royalties hereinafter set forth to be kept, performed, and paid by the said lessee, the said lessor hereby grants, bargains, and leases unto the said lessee for the purposes hereinafter set forth, and for no other purposes, all that part of Rancho Todos Santos, situate in the county of Santa Barbara, state of California, described as follows:

All of that part of the Todos Santos Rancho belonging to the Escolle Estate Company, and situated west of the Pacific Coast Railway, and consisting of two thousand (2000) acres, more or less.

To have and to hold the same during the full term of twenty (20) years from and after the date hereof, that is to say, commencing on the 1st day

of January, 1926, and ending on the 31st day of December, 1945, unless sooner terminated as hereinafter provided, for the following uses and purposes, to wit: To drill for and otherwise to obtain and to remove petroleum oil, natural gas, and other hydro-carbons of whatever kind or character; to place and erect on said premises, and to remove therefrom at any and all times, machinery, buildings, derricks, pipe lines, casings, tanks, reservoirs, telegraph and telephone lines, to construct and maintain roads, and to do all things customary, necessary, or essential in drilling for, producing, transporting, storing, and marketing oil, gas, and other substances produced hereunder on or from said premises; also to use and to develop for use such water existing or flowing on said premises as may be required for generating steam and for household and domestic uses, or any other purposes necessary, in carrying on operations on said premises under this lease; provided, that such use of water shall not interfere with the use of water by said lessor, their tenants or successors, for household and domestic purposes, for water for stock and for irrigation, or with the rights heretofore granted by said lessor to others to use or take water on or from said premises.

Said lessee agrees to commence the actual operations of drilling a well for oil upon said premises, with one string of tools, within four months from and after the commencement of the term hereof, and to carry on said operations continuously and in good faith, unavoidable accidents, delays by the elements, Sundays and legal holidays excepted, until such well is completed to success or abandonment; and within ninety days after the completion or abandonment of the first well to commence the actual operations of drilling a second well and to continue such operations in the same manner and under the same conditions as provided for the first well; and to continue such drilling operations in like manner, until this lease is canceled or terminated as hereinafter provided.

It is further understood and agreed that the aforesaid wells represent the minimum amount of drilling required to be done hereunder by the lessee, and does not, in any way, limit the said lessee from doing more work and completing more wells than is herein specifically set forth, there being no maximum limit to the number of wells which may be drilled hereunder during the term of twenty (20) years.

But the right of the said lessee to drill wells on said premises shall cease and terminate absolutely on the 31st day of December, 1945.

It is further understood and agreed that the right to drill additional wells hereunder shall be forfeited at any time at the option of the said lessor upon the failure of the said lessee to perform any of the covenants or conditions herein set forth within thirty (30) days after notice given, as hereinafter provided.

Said lessee shall have the right to cancel and terminate this lease or to abandon the drilling of wells on said premises at any time by giving notice thereof to said lessor, and in the event of such cancellation or abandonment, the right and obligation of said lessee to drill further wells shall cease and terminate.

In the event of forfeiture or termination of the right to drill wells as hereinbefore provided, the said lessee shall have the right to retain all producing wells already drilled hereunder, and to ream out, clean out, deepen and to pump and operate the same so long as said wells produce oil in commercial quantities, and to retain as much of said premises and the rights herein granted as may be necessary or essential for the operation of the wells retained, and thereupon the said lessor may proceed to drill wells for oil, gas, or other hydro-carbons or to make any other use whatsoever of said premises, provided that the said lessor shall not drill or permit to be drilled any well, or wells, within eight hundred (800) feet of any producing well operated by the said lessee.

It is further understood and agreed that the said lessee shall operate all wells drilled hereunder to their full capacity (except as immediately hereinafter provided), and shall keep the same in good repair, and operate the producing wells in accordance with the best uses in vogue in that general locality. Provided, however, that said lessee shall not be required to pump or operate any well which fails to produce oil in commercial quantities, and provided, further, that said lessee shall have the right to cease to operate wells drilled hereunder or to produce oil during any or all periods of depression when oil of similar or like quality to that produced hereunder will not sell for forty (40) cents per barrel at the wells in the Santa Maria Oilfields.

Said lessee shall have the right to continue after the 31st day of December, 1945, to clean out, ream out, deepen and to pump and operate any and all wells drilled by it on said premises as long as wells produce oil in commercial quantities, and to retain as much of said premises and of the rights herein granted as may be necessary or essential for the operation of such wells.

The said lessee shall have the right to use for fuel such oil and gas produced by it on said premises as may be necessary in drilling, pumping, and operating its wells on said premises, and without accounting for any portion thereof to said lessor.

The said lessee covenants and agrees to pay to said lessor as rent or royalty a full and equal one-eighth ($\frac{1}{8}$) part of the total oil or other products produced on said premises after deducting therefrom the amount of oil or gas necessary or essential in carrying on the work of drilling and operating the wells.

For the purpose of ascertaining and fixing said rent or royalty the said lessee shall on or before the 20th day of each and every month furnish said lessor with a written statement of the production of the wells for the preceding calendar month, and shall, at said time, make delivery of said rent or royalty produced during said preceding month.

In the event that said lessor fail to accept delivery of said royalty in kind, said lessee shall store said royalty, and transport and sell the same with the remainder or part of the remainder of the production of said wells when said lessee sells its own portion or part of its own portion of said production and account for and pay to the said lessor the net proceeds of

the sale of the lessor's portion thereof, when said proceeds are received, after deducting from the gross proceeds of sale, the actual cost of storing and transporting said oil to market.

Said lessee shall not be required to store any gas produced on said premises, and shall account only for the proceeds of gas sold.

All cash settlements for royalty or other rent hereunder shall be paid to said lessor at Bank of Santa Maria, Santa Maria, California, and said bank is hereby authorized to receive and receipt for said payments until such time as said lessor shall designate in writing some other bank or person therefor.

The said lessor or its accredited representatives shall have the right and privilege at all reasonable hours to examine the books of account and record of the production and sales of oil, gas, and other substances from said wells, and to do all things that may be necessary to ascertain if it is receiving the full royalty to which it is entitled under this lease. Provided, that said examination shall not obstruct or interfere unnecessarily with the operations of the business of the lessee herein contemplated.

It is understood and agreed between the parties hereto that the surface rights of the property hereinabove described and the use thereof for grazing and agricultural purposes are excepted from the operations of this lease to the extent that such exception shall not interfere with the use thereof by said second party for the uses and purposes herein set forth. The party of the second part in selecting rights of way over said premises for the purposes of the business contemplated in this lease, shall make such selection so as to occasion the least damage and inconvenience to the party of the first part and must whenever practicable connect with roads now in use or hereafter constructed on said premises; and in the event that said premises, or any portion thereof shall hereafter be enclosed by fences and gates, the lessee shall close the same, and shall erect and maintain a gate wherever it may be necessary for the party of the second part to open any fence for road or other purposes. All pipe lines running over land used for agricultural purposes shall be buried at least 18 inches below the surface of the ground.

All operations hereunder shall be at the expense of the lessee, and the lessee shall pay all actual damages caused to crops on said premises by any wells that may be drilled or by any operations whatever by the lessee.

The said lessee shall be entitled to the possession of so much land surrounding any well or other works on said premises as may be necessary for the proper carrying on of operations hereunder, and shall construct and maintain wherever necessary substantial fences about its works, reservoirs, and dump holes, so as to protect the stock of said lessor, their tenants, successors or assigns, from injury.

Said lessee shall pay the actual damages caused to crops or improvements of said lessor and its tenants upon said premises, caused by or resulting from the operations of said lessee thereon.

The said lessor shall have the right to use said premises for any and

every purpose, which does not interfere with the rights and operations of said lessee thereon under this lease.

It is understood and agreed that all taxes levied and assessed on the improvements made or placed on said premises by said lessee shall be assessed to and paid by said lessee, and all increase of taxes levied and assessed on the land hereby leased, occasioned by reason of the development hereunder, shall be paid by said lessee and said lessor, in the proportion of seven-eighths ($\frac{7}{8}$) and one-eighth ($\frac{1}{8}$) respectively.

Said lessee covenants and agrees to keep the said lessor and the property of said lessor herein described, free and harmless from all liens and claims, or pretended liens or claims, which may arise by reason of any material furnished or labor performed by or at the instance of the said lessee.

Time is of the essence of this agreement, and should the lessee fail or neglect to drill the wells as herein specified or to pay the rent or royalty at the time or in the manner herein provided, or should it fail to carry out any of the covenants, conditions, or agreements herein contained, by it to be kept and performed, within thirty (30) days after written notice so to do, then and in that event, the said lessor may cancel and terminate this agreement and all the rights of the lessee hereunder, except the right to retain and operate producing wells as hereinbefore provided.

In the event of any cancellation or termination of this agreement in whole or in part, said lessee shall immediately upon receipt of notice so to do, execute, acknowledge, and deliver to said lessor a proper written instrument of release or reconveyance, reserving, however, such rights as said lessee shall be entitled to retain under this agreement.

All notices herein provided to be given by said lessee, shall be delivered to the lessee personally, or be mailed and addressed to the lessee at Santa Maria, California, by registered mail, until such time as the lessee or any assignee of said lessee shall designate in writing, delivered to said lessor, or any of them, a different address.

All the property placed on said premises by said lessee, shall at all times, be and remain the personal property of said lessee, and said lessee shall remove the same from said premises within a reasonable time, not to exceed six months after the termination of this agreement.

It is further agreed that production of oil in commercial quantities, within the meaning of this lease, shall be a production of fifty (50) barrels per day or over.

It is further agreed that if the lessor shall elect to have the lessee market its royalty oil, settlement therefor shall be made by the lessee pro rata as payments are received by the said lessee.

The lessee agrees to comply with all the regulations imposed by law, or ordinances in connection with the drilling for oil, and the operation of the property, and will save harmless the lessor from any loss or damage which may be sustained by it by reason of the neglect or failure of the lessee to perform or cause to be performed anything in the premises so required.

In the event of the abandonment of any well, the lessee will cause the same to be cemented, so as to prevent damage to the leased property, or any adjoining property.

It is further agreed that the lessee shall not drill any well within six hundred (600) feet of the present dwelling house, dairy, or barn, without the special written consent of the lessor.

This agreement is executed in duplicate and shall apply to and shall bind the heirs, executors, administrators, successors, and assigns of the parties hereto.

In Witness Whereof, The said lessor has hereunto set its hand and affixed its corporate seal, by its officers thereunto duly authorized, and the said lessee has hereunto set its hand and affixed its corporate seal by its officers thereunto duly authorized, the day and year first above written.

DURYEA OIL COMPANY.

By.....

President.

By.....

Secretary.

DOMINION OIL COMPANY.

By.....

President.

By.....

Secretary.

§ 846. Lease of Plant.

Agreement made and concluded this 15th day of July, in the year of our Lord 1927, by and between the Johnson Iron Company, a corporation organized under the laws of the state of New Jersey, having its principal place of business in the city of, county of, hereinafter called the Iron Company, party of the first part, and the Ames Steel Company, a corporation organized under the laws of the state of New York hereinafter called the Steel Company, party of the second part.

Whereas, At a special meeting of the shareholders of the Iron Company, held on the 1st day of June, 1927, called for the purpose of voting for or against a proposition to lease all the property and franchises of the said Iron Company to the said Steel Company, in consideration of an annual rental of six per centum upon the capital stock of the said Iron Company amounting to seven million five hundred thousand dollars, payable to its shareholders, free from all taxes or other deductions, a majority of the said shareholders voted in favor of the said lease and the board of directors of said corporation were authorized and directed to cause to be executed and delivered the said lease, and all such other agreements, assignments and instruments in writing as might be appropriate to carry the said resolution into effect:

Now, Therefore, This Agreement Witnesseth:

First. That the said Iron Company for and in consideration of the covenants and agreements of the said Steel Company hereinafter set forth, hath demised and let, and by these presents doth demise and let unto the said Steel Company all the lands, mills, furnaces, ovens, railroads, roads, ways, offices, buildings, machinery, appliances, tools and fixtures constituting its manufacturing plant, situate at and near, in the county of, in the state of, together with all lands, real estate, mines, quarries, ore lands and mining lands belonging to or controlled by said Iron Company wheresoever the same may be situated, and also all the corporate franchises, to have and to hold the same to the said date of these presents upon the terms and conditions hereinafter set forth.

Second. And in consideration of the covenants and agreements of the said Steel Company in the third clause of this agreement hereinafter set forth, the said Iron Company assigns, transfers and sets over to the said Steel Company all of the cash, bills receivable, credits, accounts, licenses, leases, contracts, agreements, judgments, mortgages, stocks and bonds, ores, fuel, and other materials, and all products, merchandise and stock finished and in process of manufacture, and generally all of its chattels personal and all of its movable and convertible assets of every nature and kind whatsoever, and wheresoever the same may be situated, and the said Iron Company covenants, promises and agrees to execute and deliver to the said Steel Company all such further and more specific assignments as may be necessary or proper to render this general assignment more effectual.

Third. And in consideration of the premises the said Steel Company agrees, to and with the said Iron Company, as follows: The said Steel Company covenants, promises and agrees with the said Iron Company to pay to it, the said Iron Company, in equal quarterly installments commencing August 1, 1926, as annual rental for the said demised premises, and in addition to all other moneys herein provided for, a sum in United States gold coin of the present standard weight and fineness, which shall be equal to 6 per centum per annum upon the par value of the capital stock of the said Iron Company as the same shall from time to time be outstanding, provided that no increase of the capital stock of the Iron Company above the sum of \$7,500,000 shall be made without the consent of the said Steel Company evidenced by a resolution of its board of directors, said rental to be a net sum for distribution among the stockholders of the said Iron Company, free from all taxes and deductions whatsoever, payment of all such taxes and charges having been assumed by said Steel Company, as in the fourth article of this lease is more particularly stated, it being provided, however, that in lieu of the payment of said rental by the said Steel Company to the said Iron Company, the said Steel Company may make on or before the 1st days of August, November, February and May in each year, a payment to each shareholder as registered on the books of the said Iron Company at the close of the 15th day of the said month prior to the dates and periods of payment fixed as aforesaid of a sum equal to

one and one half per centum of the par value of the shares so registered in the names of such shareholders, and all payments so made by the said Steel Company to said shareholders shall be a credit upon the amount of the quarterly rental payable by the Steel Company to the said Iron Company.

Fourth. The said Steel Company has assumed, and does hereby assume all the liabilities of the said Iron Company whether the same now exist or may hereafter arise upon contracts or torts, or in any manner whatsoever, and it covenants, promises, and agrees to pay all charges and assessments upon the property, stocks and capital stock, bonds, dividends and loans of the Iron Company, and all legal claims and demands whatsoever, which may be made against said Iron Company, and in addition thereto the sum of five thousand dollars per annum payable on the 1st day of July in each year, for the purpose of maintaining the corporate organization of said Iron Company, and furthermore covenants that it will defend all suits or actions now pending or which may hereafter be brought against said Iron Company, and that it will pay all costs, damages, decrees and judgments now or hereafter entered against said Iron Company; this agreement especially including the bonds in the sum of one million three hundred and fifty-one thousand dollars, heretofore issued by said Iron Company bearing interest at the rate of five per centum per annum, payable semi-annually, the principal of the said bonded indebtedness maturing in the year 1930, which semi-annual installments of interest, together with the principal of said bonded indebtedness, are hereby expressly assumed by the said Steel Company, and it covenants, promises and agrees to pay said installments of interest and the principal of the said bonded indebtedness as the same shall fall due. And it is agreed by said Steel Company that as to the within demise of lands the said Steel Company takes the same under such titles as the said Iron Company may now have thereto, and that no warranty of title or possession is expressed in or shall be implied from this lease.

Fifth. The said Steel Company further covenants, promises, and agrees that it will at its own proper cost and charges from time to time well and sufficiently insure to the satisfaction of the Iron Company and at all times will keep well and sufficiently insured in the name of the Iron Company, all and every the buildings, structures and plants aforesaid, and all additions thereto and enlargements thereof against the casualties by fire during the continuance of this lease, and in case any of said buildings or structures shall at any time or times during said term be damaged or destroyed by fire, flood or other casualty, the said Steel Company shall and will immediately rebuild or well and sufficiently replace the same and all insurance moneys received by the said Iron Company shall be turned over to the Steel Company, to be by it expended as aforesaid except in so far as such rebuilding or replacement shall be deemed expedient by the board of directors of the corporations, parties hereto, in which case the proceeds of such insurance shall be applied to such other permanent improvements or additions as shall be approved by the board of directors

of the lessor and not to be included in the minimum expenditures of three hundred thousand dollars provided for in the sixth article hereof.

Sixth. The said Steel Company further covenants, promises and agrees that commencing with the first year of the tenancy of the demised premises and within the period of ten years hereinafter mentioned, it will expend out of its own capital the sum of not less than three millions of dollars in lands, machinery, buildings, appliances and in permanent improvements or additions properly chargeable to capital account and in the purchase of other properties or interest (title to which shall be taken to the Iron Company) for the use of the Steel Company under the lease for the purpose of increasing the efficiency of the said works and extending and rendering more profitable the business carried on in them; it being further agreed by said Steel Company that the amount to be expended as aforesaid shall not be less in any one year than three hundred thousand dollars, provided, however, that the Iron Company may at any time, or from time to time assent to a postponement of any part of the minimum expenditure of any one year, and provided that the entire three million dollars shall be expended within a period of ten years from the date of this lease.

Seventh. The said Steel Company further agrees that it will during the continuance of this lease maintain the said manufacturing plant in a state of general efficiency, making all such necessary repairs and renewals of machinery and appliances as may be required to keep the general productiveness of the works and business unimpaired and up to the requirements of the times; and the said Steel Company further agrees that, except in the case of strikes or unavoidable accidents, it will not allow a general suspension of manufacturing operations at the said works for more than three months in any one year without the written assent of the said Iron Company, the intention being that, except as herein excepted, the continuous operation of the said works shall be substantially maintained.

Eighth. It being understood that the following stocks in allied corporations or associations belonging to the said Iron Company are a part of the operating property of the said works, said stocks being as follows: 6975 shares, the James Iron Company; 500 shares, Hanford Steel Company; 526 shares, Sims Ordnance Company, preferred; 263 shares, Sims Ordnance Company, common.

It is hereby agreed that the said stocks shall continue to be held by the said Iron Company, all dividends paid thereon to be turned over by said Iron Company to the said Steel Company, the said Steel Company to have at all times the authority from said Iron Company to vote said stocks at all meetings of the respective corporations or associations; and the said Iron Company covenants, promises, and agrees to execute and deliver to the said Steel Company from time to time such proxies and powers as may be required for the purpose aforesaid. It is further agreed that such sale, exchange or other disposition of said stocks and any of them shall be made from time to time by said Iron Company as the said Steel Company

may desire, the proceeds to be applied as may be determined by the joint resolution of the board of directors of the said companies.

Ninth. It is further covenanted and agreed between the parties hereto, that all lands or other property or any interest therein, including particularly any new or dependent plant or plants which may at any time hereafter be acquired or constructed by the Steel Company out of the moneys paid into the treasury of the Steel Company on account of calls hereafter to be made upon subscription to the fifteen million dollars of capital stock of the said Steel Company shall be and continue to be a further security for the payment of the rental herein reserved, and no mortgage other than a purchase money mortgage shall be placed thereon or on any part thereof until the Steel Company by prior mortgage or other mortgage, or other appropriate conveyance, shall have secured thereon a continuing lien in favor of the Iron Company to secure all installments of rental which may thereafter accrue under the terms hereof, and it is further covenanted between the parties hereto that the Steel Company shall not at any time during the continuance of this lease take a lease or leases of property involving the payment of an annual rental amounting in the aggregate to twenty thousand dollars without the approval of a majority in interest of the stockholders of the Iron Company expressed at a meeting called for the purpose, and it is expressly covenanted and agreed between the parties hereto that the covenants of this article are of substance, and the Iron Company shall be entitled to specific performance by appropriate proceedings in a court of equity.

Tenth. That said Iron Company shall have the right at all times during the term of this lease, by its officers or agents duly appointed, to enter upon the demised premises for the purpose of examining the same and the condition thereof and to require the said Steel Company to furnish any and all information which may be pertinent to the condition of the property leased, assigned or transferred hereunder, and particularly as to the disposition or sale of any portion thereof or the proceeds of the same, and as to all expenditures of the said Steel Company under this agreement, and the said Steel Company covenants and agrees, upon request being made for such information, to furnish the same within a reasonable time.

Eleventh. It is agreed that in addition to any and all other remedies which the said Iron Company may have at law or in equity for any breach by the said Steel Company of its covenants herein set forth, any failure of the said Steel Company to fully keep and perform any of its covenants herein set forth shall, at the option of the said Iron Company, work a forfeiture of this lease, and the said Iron Company shall thereupon have the right to take possession of all chattels therein or thereon without impairing its right to recover any and all damages which it may have sustained by the default of the said Steel Company; provided, however, that before any such forfeiture be made, notice in writing shall be served upon the Steel Company at its principal office, specifying the breach of covenant and requiring performance thereof within sixty days from the performance of said covenants thus specified for said period of sixty days, the Iron

Company, at its option, may declare the forfeiture of said lease and by its officers, agents or attorneys, re-enter upon the demised premises and retake possession thereof.

Twelfth. It is agreed that this lease and all transfers of the possession of property under it shall be regarded as taking effect on the 1st day of July, A. D. 1927, on and after which date all business transacted by the said Iron Company shall be for and on account of the said Steel Company.

In Witness Whereof, The corporations parties hereto have caused their corporate seals to be hereunto affixed and duly attested the day and year first above written.

(Seal.)

Attest:

....., Secretary.

By.....
President.

(Seal.)

Attest:

....., Secretary.

By.....
President.

§ 847. Railroad Lease.

This Indenture, Made this 8th day of September, 1927, between Bradford Railway Company of Pennsylvania, party of the first part, and Buffalo Railway Company of New York, party of the second part,

Witnesseth: Whereas, The party of the first part is a railroad corporation duly organized and existing under and by virtue of the laws of the state of Pennsylvania, and owning and engaged in the operation of a railroad from the city of Bradford, McKean County, and state of Pennsylvania, to the state line between the states of New York and Pennsylvania; and

Whereas, The party of the second part is a railroad corporation duly organized and existing under and by virtue of the laws of the state of New York, and of the commonwealth of Pennsylvania, and owning and operating a railroad extending from the city of Buffalo via Olean aforesaid to Emporium, in the state of Pennsylvania; and

Whereas, The railroads of the respective parties hereto form a continuous line of railroads together, and it is deemed for the best interest of both parties that their respective roads should be under one management and control; and

Whereas, The party of the first part in pursuance of the power and authority in it vested, has agreed to grant unto the party of the second part, for the time and upon the terms and conditions herein set forth, a lease of the said railway of the said party of the first part with any additions and extensions thereof hereafter to be made, and the said party of the second part has in pursuance of the power and authority in it vested by the laws of said state, agreed to accept said lease; and

Whereas, The granting and accepting of such lease have been duly

approved, ratified, and accepted by the persons holding more than three-fourths of the capital stock of the parties of the first and second parts respectively, at meetings of the stockholders of said parties respectively, duly called for that purpose, and the execution and delivery of these presents by and between said parties, respectively have been duly authorized and directed as well by resolutions of the respective boards of directors of the said parties respectively, as by resolution of their stockholders respectively, adopted at the meetings aforesaid, by the votes of more than three-fourths of such capital stock respectively;

Now, Therefore, This Indenture Witnesseth:

First. That the said party of the first part by virtue and in exercise of the power and authority in it vested as aforesaid, and for and in consideration of the rents, covenants, and conditions herein expressed, and contained, on the part of the party of the second part, to be paid, kept, and performed, have granted, demised, and let unto, and by these premises does grant, demise, and let unto the said party of the second part, and to its successors and assigns, all and singular the railways of the parties of the first part extending from the city of Bradford, in the county of McKean, and in the state of Pennsylvania, northeasterly to the state line between the states of New York and Pennsylvania, with any additions or extensions thereof hereafter to be made, and all said tracks, turnouts, dredges, bridges, depots, stations, and other structures and things which now do or shall at any time hereafter belong or appertain to the said railway or any part of it, or which have been or shall be provided, for use in connection herewith, and all depots, stations, warehouses, and other structures, as well as either terminus of said railway as along its route, and also all of the lands whether now acquired or hereafter to be acquired by it or in the name of said party of the first part, on which the said railway, or any part of it, or any or either of the said side tracks, turnouts, depots, stations, or other structures, or things appertaining to the said railway now are or shall be located or placed, or which have been or shall be procured for any such purpose, or for any other purpose in connection with or appurtenant to the said railway, or any part of it, and all the cars, engines, locomotives, tools, machinery, works, equipments thereof, and all contracts, agreements, rights, easements, franchises, and privileges of the said party of the first part in connection with the said railway and other above mentioned premises, and generally all and singular, the rights, interests, property, franchises, and other things of whatever kind belonging or appertaining to the said railway or other premises which the said party of the first part now has, or may at any time hereafter acquire, or to which it is now entitled, or may at any time become entitled.

To have and to hold, all and singular the said railway, premises, and property, real and personal, rights, interest, and franchises and all benefits and advantages thereof, unto the said party of the second part, for and during and until the full term of nine hundred and ninety-nine years from the day of the date hereof and fully to be completed and ended. Provided, however, and it is hereby expressly agreed that nothing herein contained

shall be deemed or in any manner taken to affect the right of corporate existence of the said party of the first part, or to affect any powers and franchises, the exercise of which may from time to time become necessary to protect the interests of its stockholders, or its own interest, or the interests of the party of the second part hereto, according to the true intent and meaning of this agreement.

Second. That the said party of the first part, for itself, its successors and assigns, does hereby, in consideration of the premises covenant and agree with the party of the second part, its successors and assigns, that the party of the first part is well seized of and entitled to the possession of, all and singular, the property herein demised, and that the same is free and clear of all encumbrances and liens of every name and nature and that the latter, observing and fulfilling the covenants on its part herein contained, shall during the term hereby granted have, use, occupy, and possess, and enjoy the said railway and other above granted premises, and receive and enjoy to its own use the earnings and income and all other benefits and advantages thereof, without and free from all manner of molestation or disturbance on the part of the party of the first part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same; that the said party of the first part will at any and all times during the continuance of these premises, upon the reasonable request of the party of the second part, make, execute, and deliver to the latter, all such deeds, leases, and instruments in writing as may be necessary or proper to confirm and assure to said party of the first part, its successors and assigns, said railway and other premises above described, and hereby granted, or intended so to be, for the period of time, and upon the terms and conditions above expressed, and so as to carry into effect the intent and meaning of these presents in relation thereto, and especially in relation to any part or portions of the said railway and other described premises, which shall hereafter be acquired by the said party of the first part; that the said party of the first part will during the continuance of these presents, keep up and maintain its organization and existence as a body corporate, and to that end will from time to time comply with whatever is or may be required of it by law; that it will for and during the term granted by these presents warrant and defend the said railway and other above described premises and every part thereof, whether now acquired, or hereafter to be acquired, unto the said party of the second part, so that the same may be held and enjoyed by the latter, according to the provisions of these presents, against any person or persons whomsoever lawfully claiming or to claim the same; that it will from time to time, upon request of the party of the second part adopt such laws and regulations, and do and perform such lawful acts and things, as may be necessary or proper for the acquisition or procurement by condemnation or otherwise, of any land, privileges or franchises needed for said railway, or in connection therewith, or to facilitate in any respect the completion or improvement of the said railway, by extension, enlargement, addition, or otherwise, or for the protection and preservation of the same,

and of the rights and franchises connected therewith, and for maintaining the said party of the second part in the full and free enjoyment during the term hereby granted of the said railway and its appurtenances, and said rights and franchises; and that it will procure its charter and corporate existence to be extended to the full end and term of this lease, as hereinbefore specified; and that it will take all necessary proceedings for that purpose, and that if default shall be made by the party of the first part, in any of the matters aforesaid, or if the parties of the second part shall deem it expedient the same may be done by the party of the second part, or its officers or agents, in the name and as the act of the party of the first part; and that the party of the second part may for its own use and benefit, but at its own expense and charge, use the name, franchise and corporate power of the party of the first part for such purpose, and also in commencing, prosecuting, or defending any suit, action, or other legal proceeding which may be necessary or proper to enable the party of the second part to assert, maintain, or defend any right, franchise, or privilege belonging to the party of the first part in reference to the said railway, or to the construction, maintenance, or operation of said railway, or to protect such rights, franchises, or privileges from invasion or injury.

Third. That the said party of the second part in consideration of the premises and of the covenants herein contained on the part of the party of the first part, doth hereby for itself, its successors and assigns, covenant and agree with the party of the first part, its successors and assigns, that the said party of the second part, its successors and assigns, will duly pay, satisfy, and discharge all taxes and assessments of every description which at any time during the term hereby granted, shall be levied or imposed upon, or may accrue in respect to the said railway, or other premises hereby demised, or any part thereof, or the business done upon said railway from the date hereof, in the same manner and to the same extent as the party of the first part would be liable to pay if these presents had not been executed.

Fourth. That the said party of the second part will also at all times during the said term, at its own expense, operate the said railway and maintain and keep the same and everything appertaining thereto in good order, condition, and repair, and as soon as the said railway, or any part thereof shall be completed, so that it may be put in operation will thenceforth during the remainder of the term hereby granted, operate the same, and furnish such materials, rolling stock, equipment, supplies, and other things as shall be requisite for that purpose, and will indemnify and save harmless the party of the first part, of and from any and all loss, expense, cost, and damage by reason of any loss or injury to any property, passenger, or other person caused by the operation of the railway of the party of the first part, which the party of the first part shall sustain, or incur, by reason of any default by the party of the second part, or its agents or employees in the operation, management, or use of the said railway, and demised premises, or any part thereof, or by omission on its part to perform any act or things required by law to be done in or about the operation thereof,

but notice of every such claim shall be given to the party of the second part, so that it may have reasonable opportunity to examine and defend the same, and that generally in respect of the said railway and maintenance, management, and operation thereof, the said party of the first part will, during the said term hereby granted, observe, perform, and fulfill all duties and obligations which now rest or may hereafter be imposed upon the said party of the first part, under or by virtue of the laws of the said state of Pennsylvania, or otherwise to the same extent and effect, as the said party of the first part would be compelled to observe, perform, and fulfill such duties and obligations, if these presents had not been made, and at the expiration or sooner determination of the said term, the said party of the second part will surrender the said railway, and other hereby granted premises and property, to the said party of the first part, its successors and assigns, in as good state and condition as it ought to be in, according to the stipulations of these presents.

Fifth. That the said party of the second part, its successors and assigns, in consideration of the premises, and of the covenants herein contained, on the part of the party of the first part, will hire and take, and does hereby hire and take, and will pay unto the party of the first part, as and for the rent of said premises, fifty dollars per annum during each and every year of said term, payable on the first Monday in January of each year, commencing on the first Monday in January, 1927, and will also as a part of said rent, pay dividends on all shares of the capital stock of said lessor company, now outstanding and recorded on the books thereof, for which certificates shall have been or may be issued, which said dividends shall be at the rate of seven per cent (7%) per annum, and shall be declared semi-annually, on some day between the first and fifteenth days of June and December of each year, and shall be payable on some day to be fixed by the board of directors of said lessee, between the first and fifteenth days of July and January in each year during the term hereby created, and may be paid either directly to representative stockholders of said party of the first part, in whose names said shares shall at the time of the payment of dividends stand on the books of the said party of the first part, or to the said party of the first part, for distribution among said stockholders, at the election of the party of the second part, and such payment of said dividends in either of these methods, shall be full and ample discharge and satisfaction of all claims in respect of such dividends.

Sixth. It is further covenanted and agreed by and between the parties hereto, their respective successors and assigns, as follows:

One. This lease is made, delivered, and accepted, upon condition that if default be made by the lessee at any time herein, and such default shall continue for the period of ninety days in the payment of any dividends or other rent hereby reserved, or in the fulfillment of any of the covenants herein contained, on the part of the said lessee to be kept and performed, then and in that case, and from thenceforth this lease shall at the option of the lessor, cease and become void and of no effect, and it shall be lawful for the lessor, or its successors, or assigns, into and upon the said demised

premises, and every part thereof, fully to re-enter and to remove all persons therefrom, and the same to have again, and repossess and enjoy, as in its first and former estate, anything hereinbefore to the contrary notwithstanding, and thereupon the said lessee, its successors and assigns, shall account to and with said lessor, its successors and assigns, for and in respect to all moneys and property, which may have been received by the said lessee hereunder.

Two. The said lessor hereby agrees with the said lessee, its successors and assigns, that all moneys due, or to become due to it, and all claims, demands, causes of action, contracts, agreements, licenses, and all other corporate property or things in action, owned or possessed by it, and not included in the description of the property hereinbefore demised, including any moneys due, or to become due from the stockholders on unpaid subscriptions of stock, shall and may be used and applied by said lessee, its successors and assigns, in such manner, and to such extent as they may deem necessary or expedient, and about the construction of any uncompleted portion of the railway of any such lessor, now existing, or hereafter to be acquired, and any additions or extensions thereto hereafter to be made, and the acquisition of the lands and rights of way therefor, and in operating said railway now existing, or hereafter to be acquired, and any additions or extensions thereof, and in equipping or maintaining, repairing and keeping in repair, the same and the appurtenances thereof, and the premises and property hereby acquired, and generally in and about the performance of the several acts and things herein required and agreed to be done by said lessee, its successors or assigns, and to enable the said lessee, its successors and assigns, to pay or secure to be paid the moneys hereby agreed to be paid, and otherwise to do, perform, and fulfill the covenants on its part herein contained.

Three. If hereafter it shall appear to the party of the second part or its assigns, that the line or lines, route or routes, grade or grades of the railway of the party of the first part, as heretofore adopted, can by a change thereof be improved, then the party of the first part will, at the expense of the party of the second part, from time to time take, or cause to be taken, such proceedings as may be deemed necessary by the party of the second part for that purpose, and such proceedings as may be deemed necessary by the party of the second part to secure such changes and alterations as shall make the operation of the railway of the party of the first part more convenient and useful, and that it will acquire in the manner hereinbefore mentioned, any and all additional lands, rights, and privileges, requisite for the purpose of making such alteration and changes, but the expense thereof shall be borne by the party of the second part.

Four. The party of the first part will, from time to time, adopt such by-laws and regulations, and take all such legal and proper measures and proceedings, at the cost and expense of the party of the second part as may be needful, and shall be deemed requisite by the party of the second part, to enable the party of the second part, its successors and assigns, to secure additional lands, privileges, and franchises for the purpose of increasing

the capacity of the railroad of the party of the first part, and its appurtenances, for the transportation of the persons and property, and for the more convenient, safe, and possible use and operation of the property hereby demised, and in case of its failure so to do, the party of the second part shall be authorized either in its own name, or in the name of the party of the first part, to take all such measures and proceedings for the purposes aforesaid.

Five. The party of the first part will, at the request of the party of the second part, institute and prosecute in its own name, any and all proper proceedings for the purpose of acquiring the right to cross, intersect, or connect with any other railroad or railroads, which it shall or may become necessary to cross, intersect, or unite with, in the construction or operation of the railroad of the party of the first part, but the expense thereof shall be borne by the party of the second part, and all the proceedings herein mentioned, and which the party of the first part has hereinbefore agreed to institute and prosecute shall be conducted by the counsel of the party of the second part, or by counsel selected by it.

Six. The boards of directors of the respective parties hereto, their successors or assigns, may at any time during the continuance of the term hereby created, agree upon a sum in gross, or secured to be paid to the lessor, its successors or assigns, in satisfaction and discharge of all rents under this lease, save and excepting the sum of fifty dollars annually, agreed to be paid as hereinbefore contained, and said lessor, for itself, its successors and assigns, shall and will accept, and receive said sum in such satisfaction and discharge, and shall and will execute and deliver a proper release and discharge accordingly.

Seven. The board of directors of the respective parties hereto, their successors or assigns, may at any time during said continuance of this lease, and from time to time, make such alterations and modifications of the terms, conditions, and provisions thereof, or in any or either of them, as the said boards may deem expedient, and this lease as so modified, shall be construed and take effect as if the same had originally been made in such altered or modified form.

In Witness Whereof, The parties hereto in pursuance of resolutions of their respective boards of directors, has caused these presents in duplicate to be subscribed by their respective presidents and attested by their respective secretaries, and their respective corporate seals to be hereunto affixed, the day and year first above written.

CHAPTER XLVIII.

MORTGAGE OF CORPORATE PROPERTY.

- § 848. Power of Corporation to Mortgage.
- § 849. Who May Execute or Authorize Mortgage.
- § 850. Execution of Mortgage.
- § 851. Mortgage by a Corporation.
- § 852. Chattel Mortgage by Corporation.
- § 853. Deed of Trust by Corporation.
- § 854. Authorization to Reconvey Property and Satisfy Trust.

§ 848. **Power of Corporation to Mortgage.**—To carry out its corporate objects a corporation may borrow money and secure the lender by a mortgage on its property.¹ Where the statute does not expressly give or deny the power to mortgage, it may be implied from the power to purchase, hold and dispose of real estate.² However, the implied power to mortgage can only be co-extensive with the power to alienate absolutely, because every mortgage may become an absolute conveyance by foreclosure, and where from the nature of the property and the character of the corporation there is no authority to alienate, there is no implied power to mortgage.³

§ 849. **Who May Execute or Authorize Mortgage.**—The directors of a corporation usually must authorize the execution of a corporate mortgage, and since corporate powers must be exercised by directors, stockholders cannot, by their own acts, mortgage corporate property.⁴ While the directors have the power to mortgage the property of the corporation, yet to do so lawfully it is necessary that they be in session at a meeting lawfully assembled.⁵

¹ *Fitch v. Lewiston Steam Mill Co.*, 80 Me. 34, 12 Atl. 732; *Evans v. Boston Heating Co.*, 157 Mass. 37, 31 N. E. 698; *Benbow v. Cook*, 115 N. C. 324, 20 S. E. 453, 44 A. S. R. 454.

² *Branham v. San Jose*, 24 Cal. 585; *West v. Madison County Agricultural Board*, 82 Ill. 205.

³ *Commonwealth v. Smith*, 10 Allen (Mass.) 448, 87 A. D. 672; *Richardson v. Sibley*, 11 Allen (Mass.) 65, 87 A. D. 700.

⁴ *Curtin v. Salmon River Hydraulic G. Min. & D. Co.*, 130 Cal. 345, 351, 62 Pac. 552, 80 A. S. R. 132; *Wolf v. Erwin & Wood Co.*, 71 Ark. 438, 75 S. W. 722; *Hodder v. Kentucky & G. E. Ry. Co.*, 7 Fed. 793.

⁵ *Citizens Securities Co. v. Hammel*, 14 Cal. App. 564, 568, 112 Pac. 731.

Neither the president nor the secretary has authority to execute a mortgage on corporate property, in the absence of a resolution passed by the board of directors duly assembled.⁶ However, the irregularity of a meeting of the board of directors at which a mortgage is executed does not affect the mortgage dealing in ignorance and good faith with the corporation.⁷

It is frequently required by the charter or a general law as the prerequisite to the making of a corporate mortgage that the consent of a certain proportion of the stockholders shall be given, and such consent should be given at a duly convened stockholders' meeting.⁸ It is generally recognized that a statutory requirement in this respect is for the protection of the stockholders, and that there can be no complaint by others, when the stockholders themselves acquiesce in the discharge of formalities prescribed for their benefit alone.⁹

§ 850. Execution of Mortgage.—In executing a mortgage, a corporation must comply with the statutory requirements and its own by-laws, and if the mortgage is on real estate it must be under the corporate seal.¹⁰ The right to execute a mortgage depends upon the laws of the state of incorporation, though in the case of real property the right must be exercised in accordance with the laws of the place where the property is situated.¹¹ However, a mortgage is not void because executed without the state of incorporation.¹²

⁶ *Alta Silver Min. Co. v. Alta Placer Min. Co.*, 78 Cal. 629, 632, 21 Pac. 373.

⁷ *Ashley Wire Co. v. Illinois Steel Co.*, 164 Ill. 149, 45 N. E. 410, 56 A. S. R. 187.

⁸ *Nelson v. Hubbard*, 96 Ala. 238, 11 So. 428, 17 L. R. A. 375; *Forbes v. San Rafael Turn Pike Co.*, 50 Cal. 340; *Lord v. Yonkers Fuel Gas Co.*, 101 N. Y. 614, 3 N. E. 902; *Royal Consol. Min. Co. v. Royal Consol. Mines Co.*, 157 Cal. 737, 110 Pac. 123, 137 A. S. R. 165.

⁹ *Wood v. Corry Water Works Co.*, 44 Fed. 146, 12 L. R. A. 168.

¹⁰ *Eagle Woolen Mills Co. v. Monteith*, 2 Ore. 277; *Koehler v. Black River Falls Iron Co.*, 67 U. S. (2 Black) 715, 17 L. Ed. 339.

¹¹ *United Water Works Co. v. Omaha Water Co.*, 21 Misc. Rep. 594, 48 N. Y. Supp. 817.

¹² *Hervey v. Illinois M. R. Co.*, 28 Fed. 169.

§ 851. Mortgage by a Corporation.

This mortgage, made the day of, 19..., by the Company, a corporation organized and doing business under the laws of the state of, and having its principal place of business at, county of, state of, and hereinafter called the party of the first part, to, of the same place, hereinafter called the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of dollars (\$.....), current lawful money of the United States of America, to it in hand paid, the receipt whereof is hereby acknowledged, does, by these presents, mortgage to the said party of the second part all that certain land, with the improvements thereon, in the county of, state of, bounded and particularly described as follows, to wit:

Together with all the tenements, hereditaments and appurtenances thereunto belonging, and the rents, issues and profits thereof.

This mortgage is intended to secure the payment of dollars (\$.....), which the party of the second part has loaned to the party of the first part, upon its promissory note for said amount, dated, 19..., and payable after date thereof, in current lawful money of the United States of America, with interest at the rate of per cent a year until paid, the said interest to be paid annually on the day of

This mortgage is also intended to secure, and does hereby secure, the payment of all liens, encumbrances, charges, and the counsel fees herein mentioned; said counsel fees to become payable and be allowed if suit be commenced to foreclose this mortgage.

In case default be made in the payment of the said principal, or any installment of interest, as provided, then the whole sum of principal and interest shall be due at the option of the said party of the second part, or assigns; and suit may be immediately brought and a decree be had to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale, to retain the said principal and interest, although the time for payment of said principal sum may not have expired, together with the costs and charges of making such sale, and of suit for foreclosure, including counsel fees at the rate of per cent upon the amount which may be found to be due for principal and interest, by the said decree, and also the amounts, both principal and interest, of all such payments of liens or other encumbrances as may have been made by the said party of the second part, by reason of the permission hereinafter given; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said party of the first part, or its assigns.

And it is hereby agreed that the said party of the second part, his heirs, executors or assigns, may pay and discharge at maturity all liens or other encumbrances now subsisting or hereafter to be laid or imposed upon said

lot of land and premises, excepting for taxes and other assessments, levied or assessed upon this mortgage, or upon the money secured hereby, and which may be in effect a charge thereupon; and such payments shall be allowed with interest thereon at the rate of per cent per annum; and such payments, and interest, and the counsel fees, costs, and other expenditures mentioned in this mortgage shall be considered as secured by these presents, and shall be a charge and preferred lien upon said premises, and shall be repayable in the same kind of money or currency in which the same may have been paid, and may be deducted from the proceeds of the sale above authorized.

In Witness Whereof, The said party of the first part, by resolution of its board of directors passed on the day of, 19..., has caused these presents to be subscribed by its president and secretary, and its corporate name and seal to be hereunto affixed, the day and year first above written.

(Signature)

(Corporate Seal.)
(Acknowledgment.)

By....., President.

....., Secretary.

§ 852. Chattel Mortgage by Corporation.—An ordinary chattel mortgage by a corporation may be as follows:

Know All Men by These Presents, That, Whereas, The New Era Printing Company, a corporation organized and doing business under the laws of the state of, is indebted to John Dickson in the sum of two thousand dollars (\$2,000) for printing presses and office equipment in the printing office of said corporation.

Now, for the purpose of securing payment of said sum and the interest thereon to the said John Dickson, the said New Era Printing Company hereby sells, assigns and transfers to the said John Dickson, all the goods, wares and articles of personal property, described as follows:

Two rotary (Hoe) printing presses, new.

Two linotype (Smith) machines Nos. 8691 and 8692.

Said property now being and remaining in the possession of the said New Era Printing Company at 50 Printing House Square, Washington, D. C.

Provided, and this mortgage is made upon the express condition that, if the said New Era Printing Company shall pay to the said John Dickson the sum of two thousand dollars (\$2,000) with interest from the date hereof, at the rate of ten per cent per annum, on or before the 1st day of September, 1927, which said sum the said corporation hereby agrees and binds itself to pay upon said last named date, then this transfer is to be void and of no effect; but should said corporation for any reason fail to pay said sum with interest thereon to the date of payment, on or before the date for payment aforesaid, then the said Dickson shall have full power and authority to enter upon the premises of said corporation, or any other

place or places where the said goods, chattels and personal property may be, and to take possession of and sell the same, or so much thereof as may be necessary to satisfy the said debt and the interest thereon from the proceeds thereof, after deducting all the expenses of such sale and any charges that may be incurred in the keeping of said property; and any such sale shall be public and only after due announcement thereof for two weeks previous thereto in one of the daily papers published in the city of Washington, D. C., and any proceeds in excess of the amount of said debt and interest thereon, and of the expenses of said sale and keeping of said property, shall belong to the said corporation and be paid over to it without demand and without delay. And if from any cause said property shall fail to satisfy said debt, interest, cost and charges, said corporation hereby agrees to pay the deficiency.

In Witness Whereof, The New Era Printing Company has signed its name hereto, by its president, and annexed its seal, duly attested by its secretary, this March 1, 1927.

(Corporate Seal.)

NEW ERA PRINTING COMPANY.

J. F. WESTON, Secretary.

(Acknowledgment.)

(Verification in some states.)

§ 853. Deed of Trust by Corporation.

This Deed of Trust, Made as of the first day of September, nineteen hundred and twenty-seven, by and between the Plumas Light and Power Company, a corporation duly organized and existing under and by virtue of the laws of the state of California, and having its principal office in the city and county of San Francisco, state of California, hereinafter called the Company, party of the first part, and, a corporation, having its principal place of business in the city and county of San Francisco, state of California, hereinafter called the Trustee, party of the second part,

Witnesseth: Whereas, The railroad commission of the state of California has by an order heretofore made, authorized the Company to borrow the sum of fifteen thousand dollars (\$15,000) and to issue its promissory notes bearing interest at the rate of eight (8) per cent per annum, maturing five (5) years after date; and

Whereas, The said railroad commission did thereafter authorize the Company to execute and deliver this deed of trust by way of securing the payment of the moneys evidenced by said promissory notes together with the interest thereon; and

Whereas, The Company has borrowed the sum of fifteen thousand dollars (\$15,000) aforesaid and has issued its promissory notes all of which are of like tenor and effect and are in the words and figures following, to wit:

\$1000. San Francisco, California, September 1, 1927.

Five (5) years after date, for value received, the Plumas Light and Power Company promises to pay to the bearer hereof one thousand dol-

lars (\$1000) United States gold coin together with interest thereon at the rate of eight (8) per cent per annum as evidenced by the coupons hereto attached, the said interest being payable at times and in the manner specified in said coupons. This note is one of fifteen (15) of like tenor and effect and secured by and subject to the provisions of a certain deed of trust bearing date as of the first of September, nineteen hundred and twenty-seven, and made, executed and delivered by Plumas Light and Power Company to, as trustee, which deed of trust is of record in the office of the county recorder of Plumas County, California, reference to which is hereby made.

PLUMAS LIGHT AND POWER COMPANY.

.....
President.

.....
Secretary.

Attached to each of said promissory notes are ten (10) coupons dated and numbered one (1) to ten (10), both inclusive, payable respectively on March first and September first of each year in gold coin of the United States, commencing March first, nineteen hundred and twenty-eight, and ending September first, nineteen hundred thirty-two, each of said coupons being of the sum of forty dollars (\$40) and being and representing the interest for the preceding six (6) months; each of said promissory notes bearing the certificate of the Trustee with each one of the notes secured by this deed of trust; and

Whereas, The borrowing by the Company of the said amount of fifteen thousand dollars (\$15,000) and the execution and delivery by its proper officers on its behalf of said notes in the form hereinabove set forth evidencing the indebtedness of said loan and the execution, acknowledgment and delivery by its proper officers on its behalf of this deed of trust, has been authorized and directed by a resolution of the board of directors of the Company duly passed at a meeting thereof, regularly called and held in accordance with the provisions of its by-laws, whereat the majority thereof were present and voted for the adoption of said resolution as spread upon the records of the Company, and also has been sanctioned and authorized by the stockholders of the Company holding of record at least two-thirds of the issued capital stock thereof, such consent being expressed in writing and acknowledged by such stockholders and attached to this deed of trust; and

Whereas, The railroad commission of the state of California by an order made on the day of September, nineteen hundred and twenty-seven, duly authorized the execution of this deed of trust in the form hereof.

Now, Therefore, The party of the first part in consideration of the premises and for the purpose of securing the indebtedness evidenced by said promissory notes or the renewal or renewals thereof and the payment of any additional loan or renewal thereof and of any sum or sums of money with interest thereon that may be paid or advanced by or that otherwise

may be due to the Trustees or to the holders of said notes under the provisions of this instrument, does hereby grant, bargain, sell, convey, assign, transfer and set over unto the said party of the second part, its successors and assigns in trust, all and singular the following described property, to wit:

Those certain lots, pieces and parcels of land situate, lying and being in Indian Valley, county of Plumas, state of California, and described as north one-half of southwest one-quarter and the southeast one-quarter of the northwest one-quarter of section three (3), township twenty-six (26) north of range nine (9) east, M. D. B. M.

Also the Company's plant, electric works, power house and other stations or buildings for the generation, transmission or storage of power or electricity, and the fixtures, fittings and equipment thereof including the dynamos, engines, transformers, meters, convertors, switchboards, shafting, belting and other appliances, and all transmission lines, conduits, feeders, poles, mast arms, brackets, pipes, cables, wires, insulators, lamps and electric fixtures of every kind and nature whatsoever, and also all franchises, privileges, easements, rights of way authorizing the erection and maintenance and operation within the county of Plumas of poles, conduits, wires, mains, and other structures and properties for the transmission and distribution of electricity for any purpose whatsoever, together with all the appurtenances and appliances connected with and appurtenant thereto; and any and all increase of or to any of the above denominated items, whether by replacement, repairing or adding to the aggregate thereof of new appliances or items as above denominated.

Together with all and singular, the tenements, hereditaments, rights, franchises, powers, privileges, immunities and appurtenances of any of said properties thereto belonging or in any wise appertaining, and all the rents, issues and profits arising or to arise therefrom.

To have and to hold the same to the party of the second part, its successors and assigns (said party of the second part being hereby expressly authorized if it so elect, to convey, subject to the trust expressed herein, the premises above described to such person or corporation as it may select as a successor upon the following express trusts, to wit:

First: During the continuance of these trusts the party of the first part agrees as follows:

(a) To pay before delinquency all taxes and assessments upon said property and upon the debt secured hereby.

(b) To pay when due all other claims, liens, and incumbrances affecting or purporting to affect the title to said property and all costs, charges and expenses of the Trustee and of these trusts.

(c) To provide fire insurance satisfactory to, and with loss, if any, payable to the party of the second part.

(d) To appear and defend in any action affecting, or purporting to affect said property or these trusts and to commence and prosecute any action necessary to protect the same and to pay all expenses thereof.

(e) To protect, preserve and defend said property and the title thereto

and to keep said property in good repair and condition by proper care, inspection, rehabilitation or otherwise and to permit no waste or deterioration thereof.

(f) To pay at once and without demand all sums advanced or expended under the terms hereof with interest thereon at eight (8) per cent per annum from the date of advancement until paid, and a failure to do so within ninety days thereafter shall constitute a default hereunder, as hereinafter provided.

Second: Should the party of the first part fail or refuse to pay, provide or do any of the foregoing things in the manner and at the time hereinbefore mentioned, then the party of the second part may, without notice to the party of the first part, pay, provide or do the same in such manner or amount as it may choose, and may pay, purchase, contest or compromise any claims, liens or incumbrances which in its judgment appear to affect said property or these trusts, but it shall not be obligated to do so; and these trusts shall be and continue as security to the party of the second part and the holders of said notes, or their assigns, for the repayment in gold coin of the United States of the money so borrowed by the party of the first part and the interest thereon, and all amounts so paid out for fees, services, costs and expenses, incurred, including all money advanced not included in the notes.

Third: Upon the payment of all the sums secured or intended to be secured thereby, and the surrender to it of said promissory notes for cancellation, said Trustee shall reconvey said property without warranty to the party of the first part, its successors or assigns.

Fourth: If default be made in the payment of the principal or interest when due in the manner stipulated in said promissory notes, including any additional loan or in the reimbursement of any sums advanced as provided herein to be paid, or of any interest thereon, then the party of the second part or its assigns may declare all of the indebtedness secured hereby due and payable, by first serving a written notice of his intentions so to do, ninety days prior to the date thereof on any member of the board of directors or any officer of said party of the first part, and the party of the second part shall sell the above granted premises or such part thereof as the party of the second part, its successors or assigns shall in its discretion find it necessary to sell, in order to accomplish the objects of these trusts in the manner following, namely: The party of the second part, its successors or assigns, shall publish notice of the time and place of such sale with the description of the property to be sold, at least once a week for six successive weeks, in some newspaper published in the city and county of San Francisco, California, and may from time to time for one day or several days, postpone such sale by publication, by republishing the notice of sale in some newspaper with date of the postponement attached thereto, in one issue only prior to the date of the postponed sale; and on the day of the sale so advertised or on the day to which such sale may be postponed, the party of the second part, its successors or assigns, shall sell the property so advertised, the whole or any part thereof, at public auction in the city

and county of San Francisco, California, to the highest cash bidder, and the holder or holders of said promissory notes, or any of them, his agents or assigns, may bid and purchase at such sale.

And the party of the second part, its successors or assigns, may establish as one of the conditions of such sale, that all bids and payments for the said property shall be made in like gold coin as aforesaid and upon such sale shall make, execute and after due payment made, deliver to the purchaser or purchasers a deed or deeds of grant, or a deed in any form it may select or other instrument, conveying so much of the above granted premises and property as are sold, and out of the proceeds of such sale or sales shall pay:

1st. The expenses thereof, together with all the expenses of this trust, including counsel fees, all advances made, and interest on any of the payments aforesaid.

2nd. All sums which may have been paid by the party of the second part, its successors or assigns, or the holder or holders of the notes aforesaid and not reimbursed, whether paid on account of incumbrances or insurance as aforesaid, or in the performance of any of the trusts herein created, and whatever interest may have accrued thereon; then the principal and interest unpaid upon the promissory notes and any additional sums advanced and interest thereon; and lastly the balance of such proceeds, if any, to the party of the first part, its heirs or assigns. If a sale is made at the request of the holder of the deed of trust and the registered note, the Trustee shall not be liable to any other person claiming to hold any part of the indebtedness secured by said deed of trust.

And in the event of a sale of said premises or any part thereof, and the execution of a deed or deeds therefor under these trusts, then the recitals therein of default, publication of notice of sale, and also publication of notice of postponement, if the same has been postponed, sale, and receipt of the purchase money, shall be conclusive proof of such default, of the due publication of the notice required, of the sale and of the notice of postponement, together with such notices as are required by this instrument, that the sale was made to the highest bidder and that the purchase money was paid; and any such deed or deeds or any instrument conveying the property herein conveyed in trust, with all such recitals, shall be effectual and conclusive as against the party of the first part, its heirs or assigns, and all other persons; and the recital of the receipt of the purchase money contained in any deed or deeds, or any instrument conveying the property herein conveyed in trust, executed to the purchaser as aforesaid, shall be a sufficient discharge to such purchaser from any obligation to see the proper application of the purchase money according to the trust provided in this instrument.

Fifth: Any right which the Trustee may be entitled to exercise hereunder for the protection of the holder or holders of all or any of said notes shall be exercised by the Trustee at the request of the holder of any note, provided, however, that before the Trustee shall be required to exercise any right or do any act or thing under this deed of trust, there shall first

be deposited with it by the party or parties so requesting such action, in cash, the amount of the necessary expenses to be incurred by it, together with indemnity sufficient to the Trustees against any liability which might or would be incurred by such action.

Sixth: Should the railroad commission of the state of California authorize the Company to borrow additional money under the security of this deed of trust, the Company shall have the right to issue notes of like tenor and effect with those already authorized and said notes when so issued shall have detached the interest coupons which shall have matured, but in all other respects shall be deemed and treated as if they had been a part of the original issue herein referred to and entitled to equal and uniform participation in the security and benefit of this deed of trust without priority of any note over any other.

In Witness Whereof, The party of the first part has caused these presents to be signed by its president and its corporate seal to be hereunto affixed, attested by its secretary, the day and year first above written.

PLUMAS LIGHT AND POWER COMPANY.

By.....
President.

Attest:
Secretary.

§ 854. Authorization to Reconvey Property and Satisfy Trust.—Where a corporation holds a conveyance of property to secure an indebtedness to itself, or in trust to secure an indebtedness to a third party, it becomes necessary, upon satisfaction of the indebtedness, to reconvey to the grantee. The board of directors usually authorizes an officer or agent to reconvey the property. Such authority may be given by a resolution by the board in the following form:

RESOLUTION AUTHORIZING RECONVEYANCE UNDER TRUST DEED.

Whereas, The Clearwater Ditch Company, a corporation duly organized and existing under the laws of the state of, did on the 1st day of March, 1927, execute, acknowledge and deliver to this corporation a deed of trust to secure the payment to it of the sum of ten thousand dollars (\$10,000) and the interest thereon, all of which fully appears from said deed of trust of record in the office of the county recorder of the county of, state of, in book of deeds of trust, at page thereof, by which deed of trust there was conveyed to this corporation the following described real estate, to wit: (Here insert description.)

And Whereas, The said note mentioned in said deed of trust has been fully paid, together with the interest thereon to date, and the said Clear-

water Ditch Company having requested a reconveyance of the property conveyed by said deed of trust, and having satisfied all charges and claims to remaneration of this corporation as such trustee, and the trust created by said deed having been fully satisfied; now, therefore, be it

Resolved, That this corporation, the Enterprise Investment Company, reconvey to the Clearwater Ditch Company, a corporation, by deed, grant, bargain and sale in due form, all of the property conveyed by said deed of trust, and hereinbefore referred to, which deed was heretofore duly accepted by this corporation, and that the trust created by said deed be declared fully satisfied and discharged; and that, the president, and, the secretary of this corporation, be and they are hereby authorized, empowered and directed, for, on behalf of, and in the name of this corporation, to execute, acknowledge and deliver to said Clearwater Ditch Company, a deed of, grant, bargain and sale in due form, conveying to it all of said property described in said deed of trust to be fully satisfied.

CHAPTER XLIX

INCREASE OR DECREASE OF CAPITAL STOCK.

- § 855. Introduction.
- § 856. Power to Increase or Decrease Capital Stock.
- § 857. What Does Not Constitute an Increase.
- § 858. Procedure for Change of Capital Stock.
- § 859. Filing of Certificate of Increase or Decrease of Capital Stock.
- § 860. Fraudulent Increase of Capital Stock by Incorporation.
- § 861. Court Will Not Inquire Into Necessity of Increase.
- § 862. Stockholders' Right to Subscribe for Increase of Stock.
- § 863. Disposal of Increased Stock.
- § 864. Adjustment of Conditions to Decreased Capital Stock.
- § 865. Change in Capital Stock Through Meeting of Stockholders.
- § 866. Notice of Stockholders' Meeting to Consider Increase of Capital Stock.
- § 867. Resolution of Stockholders Increasing Capital Stock.
- § 868. Certificate of Increase of Capital Stock.
- § 869. Short Form of Certificate of Increase of Capital Stock.
- § 870. Diminishing Capital Stock Without Stockholders' Meeting.
- § 871. Resolution of Directors Diminishing Capital Stock.
- § 872. Assent of Stockholders to Diminution of Capital Stock.
- § 873. Certificate of Diminution of Capital Stock.
- § 874. Certificate of Reduction of Capital Stock.
- § 875. Distribution of Capital Stock or Capital Assets Among Stockholders.
- § 876. Blue Sky Authorization to Distribute Corporate Assets.

§ 855. **Introduction.**—An occasion may occur during the course of the existence of a corporation when, for one reason or another, it may be desirable to either increase or diminish the amount of the capital stock as set forth in the articles of incorporation. If the total capital stock has already been subscribed, and money with which to pay off an indebtedness of the corporation or to extend the business is desired, the capital stock may be increased, new certificates issued and the new shares sold. If, on the other hand, but three-quarters of the total capital stock has been issued, and there is no expectation that the balance need ever be issued, the capital stock may be decreased to the amount of that actually issued. Again, it may be that the assets of the corporation have become impaired to such an extent that the statutes of the state relating to the particular class of corporations, banking, for instance, are being violated. Under such circumstances the corpora-

tion must either levy an assessment to rehabilitate its assets, or reduce its capital stock within legal limits, so that the assets will equal the percentage of capital stock required by law.

§ 856. Power to Increase or Decrease Capital Stock.—The cases are unanimous in holding that a corporation has no power to increase or decrease its capital stock beyond the amount fixed by its charter or governing statute unless expressly authorized to do so.¹ Corporations have no implied power to change their capital stock, independent of legislative authority.²

§ 857. What Does Not Constitute an Increase.—Where amended articles of incorporation do not change or affect the number of original shares of capital stock of the corporation named in its original articles, the mere change in the amended articles of the designation of a certain portion of such shares as preferred, and of the residue thereof as common, stock, cannot be held in any sense to be tantamount to increasing or diminishing the capital stock within the meaning of a statutory prohibition.³ Nor is there an increase of capital stock, where, after the original certificate of incorporation has been executed and a certain number of shares of stock have been subscribed for, all the subscribers resolve to change the number of shares and the par value of each share, and a certificate of such amendment is filed; such transaction obliterates the old stock, and in lieu thereof establishes another differing in amount, number of shares and par value, and any subsequent subscription must be for the stock as thus changed.⁴

§ 858. Procedure for Change of Capital Stock.—The increase or decrease of the capital stock is a matter of such im-

¹ *Scovill v. Thayer*, 105 U. S. 143, 26 L. Ed. 968; *Navajo Min., etc., Co. v. Curry*, 147 Cal. 581, 82 Pac. 247, 109 A. S. R. 176; *Marion Trust Co. v. Bennett*, 169 Ind. 346, 82 N. E. 782, 124 A. S. R. 228; *Kom v. Cody Detective Agency*, 76 Wash. 540, 136 Pac. 1155, 50 L. R. A. (N. S.) 1073; *Randle v. Winona Coal Co.*, 206 Ala. 254, 89 So. 790, 19 A. L. R. 118.

² *Grangers' Life & Health Ins. Co. v. Kamper*, 73 Ala. 325; *Sutherland v. Olcott*, 95 N. Y. 93.

³ *California Telephone & Light Co. v. Jordan*, 19 Cal. App. 536, 126 Pac. 598.

⁴ *Gettysburg Nat. Bank v. Brown*, 95 Md. 367, 52 Atl. 975, 93 A. S. R. 339.

portance to the creditors and the stockholders that the statutes of most states provide a detailed procedure therefor which must be carefully followed.⁵ However, the proceedings may be cured of mere irregularities by conduct amounting to acquiescence, ratification, or estoppel.⁶

An increase or reduction of the capital stock of a corporation is a fundamental change in its affairs, and must be authorized by a certain number of the stockholders, at a corporate meeting, and in the manner prescribed by law.⁷ In this respect it has been held that the accomplishment of the increase by written assent of stockholders is not contemplated by a constitutional provision requiring such consent at a meeting called for the purpose of increasing the capital stock.⁸

§ 859. Filing of Certificate of Increase or Decrease of Capital Stock.—In some states, the statute prescribes in detail the proceedings which must be observed for the increase or decrease of the capital stock, for the proper certification thereof to the secretary of state, and for the filing of certified copies of the certificate with the county clerk of the county in which the principal place of business of the corporation is situated and in every county in which the corporation holds property. It is further provided that when the certified copy or copies are so filed, the certificate is conclusive proof of the increase or diminution of the capital stock and of the validity thereof.⁹ For failure to comply with the requirements as to the filing, penalties are sometimes prescribed by statute.¹⁰ However, it has been held that failure to

⁵ *Navajo Mining & Dev. Co. v. Curry*, 147 Cal. 581, 82 Pac. 247, 109 A. S. R. 176; *State v. Swanger*, 195 Mo. 539, 93 S. W. 932; *Schwab v. E. G. Potter Co.*, 194 N. Y. 409, 87 N. E. 670; *Brooman v. R. P. Vansant Lumber Co.*, 215 Pa. 75, 64 Atl. 394.

⁶ *Nelson v. Hubbard*, 96 Ala. 238, 11 So. 428, 17 L. R. A. 375; *Hoeft v. Kock*, 123 Mich. 171, 81 N. W. 1070, 81 A. S. R. 159; *Bailey v. Champlain Min., etc., Co.*, 77 Wis. 453, 46 N. W. 539.

⁷ *McNulta v. Corn Belt Bank*, 164 Ill. 427, 45 N. E. 954, 56 A. S. R. 203.

⁸ *Ewing v. Oroville Min. Co.*, 56 Cal. 649.

⁹ California Civil Code, sec. 359.

¹⁰ California Civil Code, sec. 359, subd. 4. See, also, sec. 299 of the Civil Code.

file the certificate as required by statute does not invalidate the proceedings as between the corporation and the stockholders.¹¹

§ 860. Fraudulent Increase of Capital Stock by Incorporation.—Where the directors and the holders of the majority number of shares of a corporation, knowing it to be insolvent, enter into a scheme to fraudulently increase its capital stock, representing and pretending that it is not indebted, and that such increase is solely to enable it to enlarge its business, and that it is and has been prosperous and successful, and thereby induce persons relying on these misrepresentations to purchase and pay for such stock, the corporation, as well as the guilty directors and stockholders, is answerable for the damages sustained by such purchasers.¹²

§ 861. Court Will Not Inquire Into Necessity of Increase.—Where a corporation has legislative authority to increase its capital stock for certain defined purposes, and the question of the necessity of such increase has not been submitted to the court by the legislature, evidence that no increase in capital stock is necessary is not admissible in an action to restrain the issue of new stock.¹³

§ 862. Stockholders' Right to Subscribe for Increase of Stock.—When the capital stock of a corporation is increased by the issue of new shares, the holders of the original stock are entitled, in the absence of controlling charter or statutory provisions,¹⁴ to subscribe for the new stock in the proportion that the number of shares held by each bears to the whole number before the increase.¹⁵ The foregoing rule has been applied in cases where the

¹¹ *Barrows v. Natchaug Silk Co.*, 72 Conn. 658, 45 Atl. 951.

¹² *Dorsey Machine Co. v. McCaffrey*, 139 Ind. 545, 38 N. E. 208, 47 A. S. R. 290.

¹³ *Jones v. Concord & Montreal Railroad*, 67 N. H. 234, 30 Atl. 614, 68 A. S. R. 650.

¹⁴ *Humboldt Driving Park Asso. v. Stevens*, 34 Neb. 528, 52 N. W. 568, 33 A. S. R. 654; *Ohio Ins. Co. v. Nunnemacher*, 15 Ind. 294.

¹⁵ *Eidman v. Bowman*, 58 Ill. 444, 11 A. R. 90; *Schmidt v. Pritchard*, 135 Iowa 240, 112 N. W. 801; *Gray v. Portland Bank*, 3 Mass. 364, 3 A. D. 156, leading case; *Hammond v. Edison Illuminating Co.*, 131 Mich. 79, 90 N. W.

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directors of a corporation issue new stock, in order to gain control of the corporate affairs.¹⁶

Where an issuance of new stock is authorized, a stockholder who declines to take any of the increase waives his right thereto and the waiver is binding on a subsequent transferee.¹⁷ This waiver may be express or implied. Thus, where a stockholder does not assert his privilege within a fixed time, or if no time is specified within a reasonable time, he will be deemed to have waived his right to a preference.¹⁸ It has been held, however, the fact that the stockholder does not apply for his new share at the exact day will not forfeit his right to take new stock when, at the time of his application, the stock still remains undisposed of by the corporation.¹⁹ A stockholder is entitled to enjoin the corporation from depriving him of his right to subscribe to his proportion of the new stock.²⁰ Where the stock has been disposed of by the corporation regardless of the right of a shareholder to preference, he may maintain an action for damages.¹

§ 863. Disposal of Increased Stock.—Where a corporation increases its capital stock, there are two ways in which the shares representing the increase may be disposed of. They may be offered generally to any one, whether already stockholders or not, on the same terms as those upon which the original stock was issued; or, they may be distributed among the existing stockholders as a stock dividend. The stockholders of the original shares would have the first right to subscribe for the stock, which would be

1040, 100 A. S. R. 582; *Stokes v. Continental Trust Co.*, 186 N. Y. 285, 78 N. E. 1090, 9 A. C. 738, 12 L. R. A. (N. S.) 969; *Schmidt v. Marconi Wireless Tel. Co.*, 86 N. J. Law 183, 90 Atl. 1017, A. C. 1918B 131.

¹⁶ *Whitaker v. Kilby*, 55 Misc. Rep. 337, 106 N. Y. Supp. 511; *Glenn v. Kittanning Brewing Co.*, 259 Pa. St. 510, 103 Atl. 340, A. C. 1918D 769, L. R. A. 1918D 738.

¹⁷ *Hall v. Hall*, 30 Ohio Cir. Ct. Rep. 826.

¹⁸ *Crosby v. Stratton*, 17 Colo. App. 212, 68 Pac. 130; *Real Estate Trust Co. v. Bird*, 90 Md. 229, 44 Atl. 1048; *Hammond v. Edison Illuminating Co.*, 131 Mich. 79, 90 N. W. 1040, 100 A. S. R. 582.

¹⁹ *Sommer v. Armor Gas & Oil Co.*, 71 Misc. Rep. 211, 128 N. Y. Supp. 382, 147 App. Div. 919, 131 N. Y. Supp. 1144.

²⁰ *Snelling v. Richard*, 166 Fed. 635; *Bates v. United Shoe Machinery Co.*, 216 Fed. 140, 132 C. C. A. 384; *Morris v. Stevens*, 178 Pa. St. 563, 36 Atl. 151.

¹ *Gray v. Portland Bank*, 3 Mass. 364, 3 A. D. 156.

a valuable privilege if the stock were above par in the market. They may undoubtedly waive such preference right in favor of outsiders or in favor of other stockholders. The corporation has no right, even when backed up by a majority, to sell the new shares and ignore the preferential rights of stockholders. If any stockholder dissents, the sale is void as to him.²

But capital stock is frequently increased in order to obtain additional capital with which to carry on the corporate enterprise successfully. It is clear that no such increase would take place merely through the process of declaring and paying a stock dividend. It can be accomplished only by having the stock taken and paid for by the existing stockholders, or others at par, or by converting it into treasury stock and selling it in the market. The latter can be done only by having a stock dividend declared, and then, by common consent, having the new stock donated to the corporation. That gives it the status of treasury stock, and it may be sold for less than par. The usual method of procedure is for the certificates representing the new issue to be assigned by the stockholders to the treasurer, who then sells it as his individual stock, but really for the use and benefit of the corporation.

Where there are Blue Sky Laws in force there must be obtained the same authority to issue the increased capital stock that was necessary in the case of the original issue.

§ 864. Adjustment of Conditions to Decreased Capital Stock.—In the case of a decrease of capital stock, there is no difficulty involved in adjusting the conditions surrounding those shares which have not been issued. Where, however, the amount of stock to which the capital has been reduced is less than the outstanding stock, either the par value of such shares must be reduced or a proportionate amount of stock surrendered by each stockholder.

§ 865. Change in Capital Stock Through Meeting of Stockholders.—Where it is desired to increase or decrease the amount of the capital stock by means of a meeting of the stockholders, the resolution calling such meeting may be as follows:

² Jones v. Morrison, 31 Minn. 140, 16 N. W. 854; State v. Smith, 48 Vt. 266; Gray v. Portland Bank, 3 Mass. 364, 3 A. D. 156.

RESOLUTION OF DIRECTORS CALLING MEETING OF STOCKHOLDERS TO CONSIDER INCREASE OF CAPITAL STOCK.

Be It Resolved and Ordered, That a meeting of the stockholders of the Escolle Estate Company, a corporation, be called for and held on the 22nd day of June, 1927, at 2 o'clock p. m., at the principal place of business of said corporation, to wit: Room 630 Chronicle Building, in the city and county of San Francisco, state of California, for the purpose of considering and acting upon a proposition to increase the capital stock of said corporation from \$85,000, divided into 85 shares of the par value of \$1,000 each, to \$110,000, divided into 110 shares of the par value of \$1,000 each;

That notice of said meeting be published in the Recorder, a newspaper published in said city and county of San Francisco, state of California;

That the secretary of said corporation is hereby directed to address and mail a notice of said meeting to each of the stockholders of said corporation, at least thirty days before said day appointed for said meeting, and that said notice be in the following form: (Here insert notice.)

The directors should keep in mind the fact that the capital stock must not be diminished to an amount less than the indebtedness of the corporation.³

§ 866. Notice of Stockholders' Meeting to Consider Increase of Capital Stock.—The notice may be as follows:

Notice is hereby given that in pursuance of the resolution and order of the board of directors of the Escolle Estate Company, organized and existing under the laws of the state of California, unanimously adopted at a regular meeting of said board duly held on the 20th day of April, 1927, at the principal place of business of said corporation, to wit: Room 630 Chronicle Building, in the city and county of San Francisco, state of California, a meeting of the stockholders of said corporation is hereby called for and will be held at the principal place of business of said corporation, to wit: Room 630 Chronicle Building, in said city and county of San Francisco, state of California, on Monday, the 22nd day of June, 1927, at 2 o'clock p. m., for the purpose of considering and acting upon the proposition to increase the capital stock of said corporation from \$85,000, divided into 85 shares of the par value of \$1,000 each, to \$110,000, divided into 110 shares of the par value of \$1,000 each.

By order of the board of directors.

Dated April 20, 1927.

JOS. ESCOLLE,

Secretary of the Escolle Estate Co.

§ 867. Resolution of Stockholders Increasing Capital Stock.—At the meeting of the stockholders thus called, the following resolution should be passed:

³ California Civil Code, sec. 359, Idaho Comp. Stats. 1919, sec. 4756, subd. 4.

Resolved, By the stockholders of the Escolle Estate Company representing more than two-thirds of all the subscribed capital stock of said corporation in meeting duly assembled and called by the board of directors of said corporation, that said corporation, the Escolle Estate Company, increase its capital stock from \$85,000, divided into 85 shares of the par value of \$1,000 each, to \$110,000, divided into 110 shares of the par value of \$1,000 each, and that the said capital stock of \$85,000 be and the same is hereby increased to \$110,000, divided into 110 shares of the par value of \$1,000 each.

That the president and the secretary of said corporation and a majority of the directors of said corporation shall sign the certificate required by law and that said secretary shall file the same in the office of the secretary of state.

Where the articles of incorporation provide for two or more kinds of capital stock, care should be taken that the resolution indicates the particular class or classes of stock to be increased or reduced, and the amounts apportioned to each.

§ 868. Certificate of Increase of Capital Stock.—Upon such increase or diminution of the capital stock being made there must be made a certificate under the corporate seal and signed by the president and secretary of the corporation and a majority of the directors or trustees of such corporation, showing a compliance by such corporation with the requirements of law, the total number of subscribed or issued shares of the capital stock of the corporation, and the amount to which the capital stock has been increased or diminished, and the amount of stock represented at the meeting and the total vote in the affirmative by which the same was accomplished and the total vote in the negative. The certificate must be verified by the oath of the said president and secretary. The certificate should be as follows:

CERTIFICATE OF INCREASE OF CAPITAL STOCK.

Know All Men by These Presents:

That we, Charles B. Escolle and Joseph Escolle, the president and secretary, respectively, of the Escolle Estate Company, a corporation organized and existing under the laws of the state of California; and

That we, Charles B. Escolle, Leon E. Escolle, and Adelaide Escolle, who are directors of said corporation and who constitute a majority of this board of directors, do hereby certify:

That the said Escolle Estate Company is a corporation duly incorporated under the laws of the state of California on or about March 4, 1921; that said corporation at the date of its incorporation, and ever since said date,

has had a capital of eighty-five thousand dollars (\$85,000), divided into eighty-five (85) shares of the par value of one thousand dollars (\$1,000), and at all the time hereinafter mentioned eighty-five (85) shares of said stock were issued and outstanding, and that said shares are fully paid up;

That on the 20th day of April, 1927, at the principal place of business of said corporation in the said county of San Francisco, state of California, at a special meeting of the board of directors, the following resolution was duly passed by the affirmative vote of the majority of directors of said corporation:

(Here insert resolution.)

That pursuant to said resolution of the board of directors, the following notice was published in the Recorder, a newspaper published in said city and county of San Francisco, state of California, in the manner provided by the by-laws of said company:

(Here insert notice.)

That the Recorder is and was at all times mentioned herein the newspaper designated in the by-laws of the said corporation as the newspaper in which are to be published all notices of meetings of the directors or of the stockholders of said corporation (If no such newspaper is designated in the by-laws, state that fact.);

That a copy of said notice was, at least thirty days prior to the meeting of the stockholders of said corporation therein referred to, by the secretary of said corporation, addressed and mailed to each of the stockholders whose names appeared at that date on the company's books as sufficiently addressed or identified, at his place of residence, which was then known to said secretary;

That on the 22nd day of June, 1927, at the hour of 2 p. m., at the principal place of business of said corporation, to wit: Room 636 Chronicle Building, in said city and county of San Francisco, state of California, at a special meeting of the stockholders of said corporation, the following resolution was duly passed by a vote representing at least two-thirds of the subscribed capital stock;

(Here insert resolution.)

That the total number of shares of the subscribed capital stock of said corporation at said time was 85;

That the amount of stock represented at said meeting of said stockholders of said corporation was \$85,000;

That the total vote in the affirmative by which said capital stock was increased as aforesaid was 85 shares;

That the total vote in the negative by which said capital stock was increased as aforesaid was none;

That the amount to which the capital stock has been increased is \$110,000, divided into 110 shares of the par value of \$1,000 each.

In Witness Whereof, We have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed, this 23rd day of June, A. D. 1927.

ESCOLLE ESTATE COMPANY.

By CHAS. B. ESCOLLE,

(Corporate Seal.)

President.

JOS. ESCOLLE,

Secretary.

CHAS. B. ESCOLLE,

LEON E. ESCOLLE,

ADELAIDE L. ESCOLLE,

Directors of Escolle Estate Company and constituting a majority of the board of directors of said company.

State of California, County of San Francisco, ss.

On this 23rd day of June, 1927, before me, Sid S. Palmer, a notary public in and for the said county of San Francisco, state of California, residing therein, duly commissioned and sworn, personally appeared Chas. B. Escolle, known to me to be the president of Escolle Estate Company, a corporation described in the within and annexed instrument, whose name is subscribed to said instrument as such president, and Jos. Escolle, known to me to be the secretary of said company, whose name is subscribed to said instrument as such secretary, and they severally acknowledged to me that they executed said instrument as president and secretary respectively of said corporation; and on the same day personally appeared before me, Chas. B. Escolle, Leon E. Escolle, Adelaide L. Escolle, known to me to be the directors of said company and to be and to constitute a majority of the directors of said corporation, whose names are subscribed to said instrument as such directors, and as a majority thereof, and they severally acknowledged to me that they executed said instrument as directors of said company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county of San Francisco, state of California, the day and year in this certificate last above written.

(Seal.)

SID S. PALMER,

Notary Public in and for the County of San Francisco,
State of California.

§ 869. Short Form of Certificate of Increase of Capital Stock.

We, the undersigned, a majority of the directors of The, a corporation organized under the statute laws of the state of, and located in the town of, in said state,

Hereby Certify, That at a meeting of the stockholders of said corpora-

tion duly called and held for that purpose at, in said state, on the day of, 19..., the authorized capital stock of said corporation was increased from the sum of dollars to the sum of dollars, and (or) the number of shares of the capital stock was proportionately increased from the number of shares preferred (without par value) and shares common (without par value), to the number of shares preferred (without par value) and shares common (without par value), each share of the par value of dollars, by a resolution duly adopted by a vote of (more than) two-thirds of all the outstanding stock of each class, of which resolution the following is a copy: (Here insert copy of resolution.)

Dated at this day of, 19...

(A majority of the directors.)

NOTE.—Strike out that which does not apply.

§ 870. Diminishing Capital Stock Without Stockholders' Meeting.—The meeting should be called as required in the by-laws, and if it is a special meeting, care should be taken that the notice states the purpose of the meeting. The notice may be as follows:

NOTICE OF DIRECTORS' MEETING TO CONSIDER DIMINUTION OF CAPITAL STOCK.

Office of
Escolle Estate Company,
Room 630 Chronicle Building,
San Francisco, Cal.

June 10, 1927.

To Mr. Leon E. Escolle:

Please take notice that a special meeting of the board of directors of Escolle Estate Company will be held at the offices of said corporation, Room 630 Chronicle Building, San Francisco, Cal., on the 18th day of June, 1927, at 2 o'clock p. m., for the purpose of considering a proposition to diminish the capital stock of said corporation, and to transact such other business as pertains thereto.

By order of the president.

JOS. ESCOLLE,
Secretary.

§ 871. Resolution of Directors Diminishing Capital Stock.—The resolution of the directors should be as follows:

Resolved, That the capital stock of the Escolle Estate Company be, and the same is hereby diminished from one hundred and ten thousand dollars (\$110,000), divided into one hundred and ten (110) shares of the par value of one thousand dollars (\$1,000) each, to eighty-five thousand dollars (\$85,000), divided into eighty-five (85) shares of the par value of one thousand dollars (\$1,000) each.

§ 872. Assent of Stockholders to Diminution of Capital Stock.

We, the undersigned, stockholders of Escolle Estate Company, holding all of the subscribed or issued capital stock of said corporation, hereby assent to in writing, and approve the resolution diminishing the capital stock of this corporation, and adopted by unanimous vote of the board of directors at a special meeting called for that purpose, and held at the office of the company on the 18th day of June, 1927, which said resolution as adopted, reads as follows, to wit:

(Here insert resolution.)

CHAS. E. ESCOLLE, 29 shares.

LEON E. ESCOLLE, 34 shares.

ADELAIDE L. ESCOLLE, 22 shares.

§ 873. Certificate of Diminution of Capital Stock.

Know All Men by These Presents:

That we, Charles B. Escolle and Joseph Escolle, the president and secretary, respectively, of the Escolle Estate Company, a corporation organized and existing under the laws of the state of California; and

That we, Charles B. Escolle, Leon E. Escolle, and Adelaide L. Escolle, who are directors of said corporation and who constitute a majority of this board of directors, do hereby certify:

That the said Escolle Estate Company is a corporation duly incorporated under the laws of the state of California on or about March 4, 1921; that said corporation at the date of its incorporation, and ever since said date, has had a capital stock of one hundred and ten thousand dollars (\$110,000), divided into one hundred and ten (110) shares of the par value of one thousand dollars (\$1,000), and at all times hereinafter mentioned eighty-five (85) shares of said stock were issued and outstanding, and that said shares are fully paid up;

That a special meeting of the board of directors was held at the principal place of business of said corporation, to wit: at Room 630 Chronicle Building, in the city and county of San Francisco, state of California, on June 18, 1927, at 2 o'clock p. m., pursuant to notice regularly given in accordance with the requirements of the by-laws of said corporation; that said meeting was called, and the directors were so notified, for the purpose of considering the proposition to diminish the capital stock from one hundred and ten (110) shares of the par value of one thousand dollars (\$1,000) each, to eighty-five thousand dollars (\$85,000), divided into eighty-five (85) shares of the par value of one thousand dollars (\$1,000) each;

That all the directors of said corporation were present at said meeting and participated in its proceedings; that upon motion duly made and seconded, the following resolution was unanimously adopted, to wit:

Resolved, That the capital stock of the Escolle Estate Company be, and the same is hereby diminished from one hundred and ten thousand dollars (\$110,000), divided into one hundred and ten (110) shares of the par value of one thousand dollars (\$1,000) each, to eighty-five thousand dollars

(\$85,000), divided into eighty-five (85) shares of the par value of one thousand dollars (\$1,000) each;

That the secretary of this corporation, on the 19th day of June, 1927, addressed by mail, with postage fully prepaid, a copy of the above resolution to each of the stockholders of said corporation whose names appear on the books of said company, as sufficiently addressed, at his place of residence (the place of residence of each of said stockholders then and now being known to said secretary), and that the stockholders to whom said copies of said resolutions were addressed and mailed, as aforesaid, were, on said 19th day of June, and now are, all the stockholders of said corporation;

That thereafter, and on or before the 22nd day of June, 1927, all the stockholders of said corporation, representing eighty-five (85) shares of the capital stock of said corporation, and holding all of the subscribed and issued capital stock of said corporation, filed with the secretary of said corporation their written assents to the said resolution, adopted by the unanimous vote of the board of directors, as aforesaid, at the meeting of said board held on the 18th day of June, 1927, and thereby ratifying and confirming the same in all respects as required by law; said assent is as follows:

(Here insert assent of stockholders.)

That the said capital stock, as diminished, is greater in amount than the indebtedness of said corporation.

In Witness Whereof, We have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed, this 23rd day of June, A. D. 1927.

ESCOLLE ESTATE COMPANY.

By CHAS. B. ESCOLLE,

President.

JOS. ESCOLLE,

Secretary.

CHAS. B. ESCOLLE,

LEON E. ESCOLLE,

ADELAIDE L. ESCOLLE,

Directors of Escolle Estate Company and constituting a majority of the board of directors of said company.

(Corporate Seal.)

State of California, County of San Francisco, ss.

On this 23rd day of June, 1927, before me, Sid S. Palmer, a notary public in and for the said county of San Francisco, state of California, residing therein, duly commissioned and sworn, personally appeared Chas. B. Escolle, known to me to be the president of Escolle Estate Company, a corporation described in the within and annexed instrument, whose name is subscribed to said instrument as such president, and Jos. Escolle, known to me to be the secretary of said company, whose name is subscribed to said instrument as such secretary, and they severally acknowledged to me that they executed said instrument as president and secretary respectively of said corporation; and on the same day personally appeared before me,

Chas. B. Escolle, Leon E. Escolle, Adelaide L. Escolle, known to me to be the directors of said company and to be and to constitute a majority of the directors of said corporation, whose names are subscribed to said instrument as such directors, and as a majority thereof, and they severally acknowledge to me that they executed said instrument as directors of said company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county of San Francisco, state of California, the day and year in this certificate last above written.

(Seal.)

SID S. PALMER,

Notary Public in and for the County of San Francisco,
State of California.

§ 874. Certificate of Reduction of Capital Stock.

We, the undersigned, a majority of the directors of The McConnell Motor Car Company, a corporation organized under the statute laws of the state of Connecticut and located in the town of Hartford, in said state,

Hereby Certify, That at a meeting of the stockholders of said corporation specially warned for that purpose, and held at the principal place of business of said corporation, to wit: at Room 498 Commonwealth Building, in the city of Hartford, state of Connecticut, on the 10th day of September, 1926, the authorized capital stock of said corporation was reduced from the sum of dollars to the sum of dollars, and the number of shares of the capital stock was proportionately decreased from shares preferred (strike out that which does not apply) (without par value) and shares common (strike out that which does not apply) (without par value) to shares preferred and shares common (the par value of the shares was proportionately decreased from dollars per share to dollars per share) by a resolution adopted at said meeting by a two-thirds vote of all the outstanding stock of each class, a copy of which resolution is as follows: (Here insert copy of resolution.)

And We Do Further Certify, That the records of the corporation contain a complete list of all the stockholders who voted in favor of said resolution to reduce the capital stock.

Dated at Hartford this 10th day of September, 1926.

EDWARD NEWCOMB.
FRANK JENNINGS.
J. S. STEWART.

State of Connecticut, County of Hartford, ss.

Personally appeared Edward Newcomb, Frank Jennings, and J. S. Stewart, a majority of the directors of The McConnell Motor Car Company, and

made oath to the truth of the foregoing certificate, by them signed, before me.

WILLIAM JONES,
Notary Public.
Justice of the Peace.

Dated at Hartford this 10th day of September, 1926.

§ 875. Distribution of Capital Stock or Capital Assets Among Stockholders.—In some states it is provided that the directors of a corporation may apply to the commissioner of corporations for a permit to divide, withdraw, or pay or distribute among the stockholders or any of them, any part of the capital stock or any property of the corporation other than dividends from the surplus profits arising from the business thereof. The statute prescribes in detail the procedure to be followed upon such an application.⁴

§ 876. Blue Sky Authorization to Distribute Corporate Assets.

State Corporation Department
of the
State of California.

In the matter of the application of Home Telephone and Telegraph Company for an order of the commissioner of corporations authorizing and permitting its board of directors to divide, withdraw, and pay to its stockholders its capital stock.

Home Telephone and Telegraph Company is a California corporation. It was organized September 23, 1912. It originally had an authorized capital stock issue of \$3,000,000 divided into 30,000 shares of the par value of \$100 each.

Subsequently, in August, 1915, its authorized capital was increased to \$6,000,000, divided into 60,000 shares of a like par value.

Concurrently with the proceedings for the increase of its authorized capitalization, the stockholders unanimously agreed that all shares of the original authorized issue should be considered as preferred shares and the holders thereof entitled to dividends at the rate of 5 per cent per annum, prior to the payment of any dividends upon the common stock, and that all of the shares of the increased issue should be considered as common shares, subject to such preferences, but with the right of the holders thereof to the payment of dividends up to 5 per cent per annum before the payment of any further dividends to the holders of preferred shares.

⁴ California Civil Code, sec. 309½, added by Stats. 1925, p. 317.

In February, 1918, the articles of incorporation were amended so as to provide for the preference to the preferred and common shares in conformity with this agreement.

No preference is granted to either class of stock upon the distribution of the capital assets of the corporation.

In 1912, the company authorized an issue of bonds due January 1, 1943, and amounting in the aggregate to \$2,500,000 face value. Of this issue, bonds to the amount of \$1,382,000 are still outstanding. Neither these bonds nor the trust indenture securing their payment contain any provision authorizing the company to redeem or otherwise retire them prior to their maturity.

Subsequently, in 1915, the company, for the purpose of refunding this issue and of securing additional money, authorized a further issue of bonds, due July 1, 1955, of the aggregate face value of \$5,000,000. Of this issue, bonds amounting to \$1,101,000 are still outstanding.

Other than these bonds, and the stock and dividend liabilities of the company, its debts and liabilities consist chiefly of overdue bond coupons, of amounts owing to the city of Los Angeles, and to the county of Los Angeles, on account of franchise provisions under which the company has operated, of federal income taxes, and of a possible liability to plaintiff in a damage suit now pending, the aggregate of all of which will not exceed \$100,000.

May 1, 1927, the company (hereinafter referred to as the Home Company) transferred to the Southern California Telephone Company (hereinafter called the Southern Company) all of its property, real and personal, of every kind, except its corporate franchise, corporate records, cash, bills receivable, and securities on hand, in exchange for \$8,427,000 face value of the first and refunding mortgage, thirty-year, five per cent, sinking fund, gold bonds, of the Southern Company, and in addition thereto additional bonds of the same issue of the Southern Company at 91½ per cent of their face value, equal to the amount of the additions and betterments to the Home Company's property between December 31, 1925, and May 1, 1927, and the amount of the Home Company's accounts receivable at the close of business on April 30, 1927.

The additional bonds so received amounted in face value to \$355,000.

Of the total bonds so exchanged, there were reserved by the trustee, under the deed of trust securing said issue of the bonds of the Southern Company, \$4,027,000 face value, for exchange for, or retirement of, the outstanding bonds of the Home Company, then aggregating a like amount in face value.

Payment of both the principal and interest of all of the bonds so received by the Home Company was guaranteed by the Pacific Telephone and Telegraph Company (hereinafter referred to as the Pacific Company).

Said transfer was made by the Home Company pursuant to the authority granted to it by the railroad commission of the state of California in an order of the commission made November 4, 1926.

From the investigation made by the commission of the property and

affairs of each of the companies involved in the transaction, it was found by the commission that the reproduction cost of the property of the Home Company, less depreciation, on December 31, 1925, was \$7,120,866.89, all of which property (save that which has since become obsolete or worn out and for which substitutions have been made) remains as security for the outstanding bonds of the Home Company, and assures the payment of each installment of interest as it accrues and of the principal of the bonds when due.

In the agreement for the transfer of the Home Telephone system, it was also agreed that the Southern Company would exchange bonds issued by it, par for par, for outstanding bonds of the Home Company.

This right to the holders of Home bonds to exchange them for bonds of the Southern Company, secured by all of its assets and guaranteed by the Pacific Company, which, in the hearing before the railroad commission, above referred to, reported to the commission net assets of \$82,208,355.89 constitutes but an additional assurance to the Home Company bondholders of the payment of their securities.

July 31, 1927, the assets of the Home Company consisted of cash and bills receivable amounting to \$889,609.12, and bonds of the Southern Company amounting in face value to \$4,537,000, exclusive of the bonds held by the trustee for exchange for bonds of the Home Company.

Coupons attached to these bonds and amounting to \$113,425 will mature November 1, 1927.

Under the order of the railroad commission, above mentioned, the Home Company is authorized to cease doing a telephone business and it and its stockholders desire that its affairs shall be liquidated. Its balance sheet made as of July 31, 1927, shows that it then had a "corporate surplus unappropriated" amounting to \$1,433,449.93.

In this situation, the Home Company has applied to the commissioner of corporations for authority to divide its assets among its stockholders. This application is made under the provisions of the recent amendment to Section 309 of the Civil Code, authorizing directors of corporations, with the permission or authority of the commissioner of corporations, to make dividends otherwise than from the surplus profits of the corporation arising from its business, and to divide, withdraw and pay to the stockholders the capital stock of the corporation otherwise than in accordance with the procedure provided therefor in the Civil Code.

The directors propose to pay, first, to the preferred shareholders from the undistributed surplus profits of the corporation a dividend of \$30 per share, in payment of the difference between the dividends received by the preferred shareholders during the last twelve years since said preferred shares were created, or agreed to be created, and the amount of dividends to which, under such agreement or preferences, they were entitled. The cash and bills receivable of the company, easily convertible into cash, are sufficient to pay this dividend, amounting in the aggregate to \$900,000.

Thereafter, it proposes to distribute \$4,500,000 face value of the bonds of the Southern Company (first detaching therefrom the coupons due

November 1, 1927) among all of the holders of shares of its stock, both common and preferred, share and share alike, in proportion to their respective share holdings.

Under the amendment of Section 309, above referred to, the scope of the power of the commissioner of corporations in granting authority to boards of directors is limited to acts on the part of the board of directors beyond the powers which they formerly, under this section, might exercise, and under its provisions, may still exercise. That is to say, without authority from the commissioner of corporations, directors may make, declare and pay dividends from the surplus profits of the corporation arising from its business.

The commissioner of corporations, under the amendment of Section 309, has no control or authority over the distribution of surplus profits of a corporation, and in the present case no order affecting the surplus profits of the Home Company is necessary, and on that account, this order will be limited to an authority to the board to distribute the assets of the corporation, other than its accumulated, undistributed surplus profits arising from the business.

The retention by the Home Company of the coupons to the Southern bonds, maturing November 1, assures to it an ability to pay all of its debts, other than its secured bonds remaining now outstanding.

For the foregoing reasons, a distribution of the profits and capital assets of the company is advantageous to its stockholders and a distribution made in the manner herein authorized will protect the claims of all of its creditors.

The directors of the Home Telephone and Telegraph Company are, therefore, hereby permitted and authorized to pay and distribute to and among the stockholders of the company, in the proportion to each that the number of shares held by him bears to the entire number of shares of the company now issued and outstanding, all of the property and assets of the company of every kind, other than accumulated and undistributed surplus profits arising from its business, saving and excepting from such property and assets all of the coupons maturing November 1, 1927, attached to the bonds of the Southern Company, now held by it, which coupons amount in the aggregate to \$113,425.

Such distribution is authorized nevertheless upon the condition that all certificates evidencing said shares of stock, and all trustee's certificates now outstanding, evidencing such certificates for such shares, shall, prior to the payment or distribution of such assets, be deposited with G. B. Ochel'ree, to be thereafter held and disposed of by him pursuant to the further order of the commissioner of corporations.

It is further ordered that any residue of the property or assets of the corporation remaining after distribution made, as aforesaid, and the payment of all of the debts and liabilities of the corporation, except its bonded

indebtedness, shall be subject to the further order of said commissioner or to the judgment or order of any court having jurisdiction of the proceedings for the dissolution of such corporation.

Dated: Los Angeles, Calif., October 3, 1927.

(Seal.)

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Commissioner of Corporations.

CHAPTER L.

BONDS AND BONDED INDEBTEDNESS.

- § 877. Power to Incur Bonded Indebtedness.
- § 878. Negotiability of Bonds.
- § 879. Sale of Bonds for Less Than Their Face Value.
- § 880. Pledge of Bonds as Collateral Security to a Loan.
- § 881. Issue and Sale of Corporate Bonds as Within Blue Sky Laws.
- § 882. Restoration of Lost or Destroyed Bonds.
- § 883. Resolution of Directors Calling Meeting of Stockholders to Consider Increasing Bonded Indebtedness.
- § 884. Notice of Meeting of Stockholders to Consider Increasing Bonded Indebtedness.
- § 885. Resolution by Stockholders Increasing Bonded Indebtedness.
- § 886. Certificate of Proceedings Authorizing Increase of Bonded Indebtedness.
- § 887. Creating Bonded Indebtedness Without Stockholders' Meeting.
- § 888. Notice of Directors' Meeting to Consider Creation of Bonded Indebtedness.
- § 889. Assent by Stockholders to Creation of Bonded Indebtedness.
- § 890. Certificate of Proceedings Authorizing the Creation of a Bonded Indebtedness.
- § 891. Bond Underwriting Agreement.
- § 892. Conditional Subscription to Bonds.
- § 893. Form of Bonds and Bond Mortgage.
- § 894. Corporate Bond.
- § 895. Coupon.
- § 896. Trustee's Certificate.
- § 897. Registration Blank.
- § 898. Stabilized Debenture Bond.
- § 899. Trust Deed Securing Corporate Bonds.
- § 900. Collateral Trust Agreement.
- § 901. Blue Sky Permit to Issue and Sell Bonds.

§ 877. Power to Incur Bonded Indebtedness.—In the absence of charter or statutory restrictions corporations under their incidental power to enter into obligations in carrying out the ends of their creation, may have power to issue bonds as evidence of indebtedness.¹ However, the power of a corporation to issue bonds

¹ *Keystone Nat. Bank v. Palos Coal & Coke Co.*, 150 Ala. 245, 43 So. 570; *McLane v. Placerville & Sacramento R. Co.*, 66 Cal. 606, 6 Pac. 748; *Pratt v. Higginson*, 230 Mass. 256, 119 N. E. 661, 1 A. L. R. 714; *Bergen v. Rogers*, 73 N. J. Eq. 230, 67 Atl. 290; *Tschetinian v. City Trust Co.*, 186 N. Y. 432,

is quite frequently restricted by constitutional or statutory provisions, especially the amount which the corporation may issue.²

A statute relating to a particular class of corporations, authorizing the issue of bonds for particular purposes and prescribing the requisites to their issuance is not a mere permission to do so, but is intended to prescribe the terms and conditions upon which bonds may be issued and renders invalid bonds issued without conforming to the requirements of the statute.³

It has been held that a statutory provision requiring the unanimous vote of a board of directors of a corporation in order to create a bonded indebtedness is satisfied by the unanimous vote of a quorum of the directors when it is otherwise provided that a majority of the directors shall be a sufficient number to form a board.⁴

§ 878. Negotiability of Bonds.—According to the authorities private corporation bonds are negotiable under the provisions of the Negotiable Instruments Act.⁵ A corporate bond is not rendered non-negotiable by the fact that it might at maturity, be converted by the holder into stock of the corporation.⁶ Nor is a bond issued by a joint stock association rendered non-negotiable by the fact that the members of the association are expressly exempted from any personal liability on the bond.⁷

The mere fact that in bonds issued by a corporation, reference is made to the mortgage or deed of trust securing the bonds for a description of the property and franchises thus mortgaged, the nature and extent of the rights of the holders of the bonds under

79 N. E. 401; *Shellenberger v. Altoona & P. Connecting R. Co.*, 212 Pa. 413, 61 Atl. 1000, 108 A. S. R. 873; *Rice v. Shealey*, 71 S. C. 161, 50 S. E. 868.

² See Statutory provisions of particular state.

³ *Commonwealth v. Smith*, 10 Allen (Mass.) 448, 87 A. D. 672.

⁴ *Tidewater Southern R. Co. v. Jordan*, 163 Cal. 105, 124 Pac. 716, A. C. 1913E 1293, 41 L. R. A. (N. S.) 130. See, also, *Atkins v. Phillips*, 26 Fla. 281, 8 So. 429, 10 L. R. A. 158; *Coxon v. City of Trenton*, 78 N. J. Law 26, 73 Atl. 253; *Harroun v. Brush Electric Light Co.*, 152 N. Y. 212, 46 N. E. 291, 38 L. R. A. 615.

⁵ *Pratt v. Higginson*, 230 Mass. 256, 119 N. E. 661, 1 A. L. R. 714; *Higgins v. Hocking Valley R. Co.*, 188 App. Div. 684, 177 N. Y. Supp. 444; *Nickey Bros. v. Lonsdale Mfg. Co.*, 149 Tenn. 391, 258 S. W. 776.

⁶ *Pratt v. Higginson*, 230 Mass. 256, 119 N. E. 661, 1 A. L. R. 714.

⁷ *Hibbs v. Brown*, 190 N. Y. 167, 82 N. E. 1108.

the same, and the terms and conditions upon which the bonds were issued, does not affect their negotiability.⁸ However, like bills of exchange or promissory notes, they must in themselves contain every essential requisite of negotiability. Where these are found in them, although they may be under the corporate seal, as every act of a corporation must have been manifested according to the ancient common law, the seal will not destroy their negotiability. But the seal will not confer negotiability unless these requisites are found.⁹

§ 879. Sale of Bonds for Less Than Their Face Value.—In many of the states there are constitutional or statutory provisions that “no corporation shall issue stock or bonds, except for money paid, labor done, or property actually received.”¹⁰ Under such provisions bonds issued by a corporation on account of which no money, labor, or property is paid, performed, or received are illegal and void.¹¹ Issues of bonds have, however, been sustained under such provisions when they were disposed of for the best price that could be obtained, though for considerably less than their face value.¹²

The “trust fund doctrine” has no application to bonds, for creditors are not interested ordinarily in the terms granted other creditors. Bonds, therefore, may be sold at a discount, the buyer being under no obligation, even to other creditors, to pay, in the event of insolvency, the amount of the discount.¹³

⁸ *Higgins v. Hocking Valley R. Co.*, 188 App. Div. 684, 177 N. Y. Supp. 444. See *Crocker Nat. Bank of San Francisco v. Byrne & McDonnell*, 178 Cal. 329, 173 Pac. 752; *Popp v. Exchange Bank*, 189 Cal. 296, 208 Pac. 113.

⁹ *Blackman v. Lehman, Durr & Co.*, 63 Ala. 547, 35 A. R. 57. See, also, *McClelland v. Norfolk S. R. Co.*, 110 N. Y. 469, 18 N. E. 237, 6 A. S. R. 397. 1 L. R. A. 299.

¹⁰ California Constitution, Art. XII, sec. 11; Civil Code, sec. 359; Idaho Constitution, Art. XI, sec. 9; Montana Constitution, Art. XIV, sec. 10.

¹¹ *McKee v. Title Insurance & Trust Co.*, 159 Cal. 206, 113 Pac. 140; *Peoria & S. R. Co. v. Thompson*, 103 Ill. 187; *MacQuoid v. Queens Estates*, 143 App. Div. 134, 127 N. Y. Supp. 867; *Guarantee Title & Trust Co. v. Dilworth Coal Co.*, 235 Pa. 594, 84 Atl. 516; *Rolapp v. Ogden & N. W. R. Co.*, 37 Utah 540, 110 Pac. 364.

¹² *Memphis & Little R. R. Co. v. Dow*, 120 U. S. 287, 7 S. C. R. 482, 30 L. Ed. 595; *Peoria & S. R. Co. v. Thompson*, 103 Ill. 187; *Stein v. Howard*, 65 Cal. 616, 4 Pac. 662.

¹³ *McKee v. Title Insurance & Trust Co.*, 159 Cal. 206, 113 Pac. 140.

§ 880. Pledge of Bonds as Collateral Security to a Loan.—

The power of a corporation to pledge its bonds as collateral security follows from a power to sell them. Hence under a constitutional provision that no corporation shall issue stock or bonds except for money, labor, or property, the corporation has the right to pledge its bonds as collateral security for money or property procured by it.¹⁴ Consequently, one who loans money to a corporation and receives its bonds as collateral security, is a holder of such bonds for value in due course of trade, and as such entitled to protection.¹⁵

Bonds may be pledged as collateral security for a debt less in amount than their par value, where not for a pre-existing indebtedness.¹⁶ But a pledge of bonds for a pre-existing indebtedness is in violation of a constitutional provision that no corporation shall issue stock or bonds except for money, labor, or property.¹⁷

§ 881. Issue and Sale of Corporate Bonds as Within Blue Sky Laws.—

It is a common provision in states having Blue Sky Laws that, no corporation, domestic or foreign, may sell, offer for sale, negotiate for the sale of or take subscriptions for any security of its own issue without the permit of the corporation commissioner authorizing it so to do. The term "securities" usually includes all bonds, debentures and evidences of indebtedness issued by any company, excepting, however, bills of exchange and promissory notes not offered to the public by the drawer, maker or underwriter thereof, and all mortgages and deeds of trust of property situated in the state executed to secure the payment thereof, and excepting also securities listed in a standard manual of information as to which the commissioner has first made and filed his written finding to the effect that such security is fully and adequately described in such manual and will not, in his opinion, work a fraud upon the purchaser thereof.¹⁸

¹⁴ *Illinois Trust & Savings Bank v. Pacific Ry. Co.*, 117 Cal. 332, 49 Pac. 197; *Nelson v. Hubbard*, 96 Ala. 238, 11 So. 428, 17 L. R. A. 375.

¹⁵ *New Memphis Gaslight Co. Cases*, 105 Tenn. 268, 60 S. W. 206, 80 A. S. R. 880.

¹⁶ *Atlantic Trust Co. v. Woodbridge Canal & Irr. Co.*, 79 Fed. 842.

¹⁷ *Union Loan & Trust Co. v. Southern California Motor Road Co.*, 51 Fed. 840.

¹⁸ See synopsis of various Blue Sky Laws in an early chapter in this book.

§ 882. **Restoration of Lost or Destroyed Bonds.**—In most states there are either general or special statutes under which a bondholder who has lost or had destroyed a corporation bond may have issued to him a duplicate. A judicial proceeding is necessary, generally, notice being published in order that all interested parties may have an opportunity to be heard. Usually a bond is required indemnifying all parties who might be injured by the possible production of the original bonds by parties legally entitled to them.¹⁹

§ 883. **Resolution of Directors Calling Meeting of Stockholders to Consider Increasing Bonded Indebtedness.**

Resolved, That a meeting of stockholders of said company be and the same is hereby called to be held on the 15th day of May, 1927, at 10 o'clock a. m., at the office of said company in room No., in building, at No. street, in the city of, state of (the same being the principal place of business of said corporation and where the board of directors usually meets), for the purpose of considering and acting upon the proposition to create a bonded indebtedness of said railway company to the amount of seventeen million five hundred thousand dollars (\$17,500,000) in gold coin of the United States, and thereby to increase its bonded indebtedness up to the amount in the aggregate of twenty-seven million five hundred thousand dollars (\$27,500,000) in gold coin of the United States and to secure the same by mortgage upon the railroads and railroad lines and certain properties of the company, to be prescribed in said mortgage.

Resolved, That the secretary of this company be and he is hereby directed to cause to be published at least once a week for at least sixty days, beginning on the day of instant, in the "," a newspaper published in the city of (the city where the principal place of business of such corporation is located), a notice to the stockholders of said company specifying the object of the meeting and the time and place of holding the meeting and stating the amount of the bonded indebtedness which it is proposed to create, and the amount to which it is proposed to increase its present bonded indebtedness.

Resolved, Further, That in addition to such notice by publication, the secretary of this corporation do also address a like notice to each of the stockholders of said company whose names appear on the company's books as sufficiently addressed at his place of residence, if known, and if not known, then at the principal place of business of the corporation, which notice shall be mailed to such stockholders at least thirty days before the day appointed for such meeting.

¹⁹ See California Civil Code, sec. 329.

§ 884. Notice of Meeting of Stockholders to Consider Increasing Bonded Indebtedness.

Notice is hereby given that, in pursuance of a resolution and order of the board of directors of the Market Street Railway Company, unanimously adopted at a meeting of said board, duly held at the office of the company in the city of, state of, on the day of, 19... (all members of said board being present), a special general meeting of the stockholders of said Market Street Railway Company will be held at the office of the company in room No., in building, at No. street, in the city of (the same being the principal place of business of the said corporation and being the building where the board of directors of said corporation usually meet), on the 15th day of May, 1927, at the hour of 10 o'clock a. m., for the purpose of considering and acting upon the proposition to create a bonded indebtedness of said corporation to the amount in the aggregate of seventeen million five hundred thousand dollars (\$17,500,000) in gold coin of the United States and to increase the bonded indebtedness of the corporation up to the amount in the aggregate of twenty-seven million five hundred thousand dollars (\$27,500,000) in gold coin of the United States, and to secure the bonded indebtedness so proposed to be created, by a mortgage upon the railroads and railroad lines of said company and certain properties belonging to the company to be prescribed in the mortgage.

Dated the day of, 19...

By order of the board of directors.

J. F. MOULTON,

(Corporate Seal.) Secretary of the Market Street Railroad Company.

§ 885. Resolution by Stockholders Increasing Bonded Indebtedness.

Resolved, That a bonded indebtedness of the Market Street Railway Company, to the amount of seventeen million and five hundred thousand dollars, gold coin of the United States of the present standard of weight and fineness, be created for the purpose of constructing, acquiring, completing and equipping its railroad and railroad lines, and all else relative thereto, and of paying and discharging all debts and contracts incurred in or about such construction, completion, acquisition and equipment, and all else relative thereto, and for the purchase of property within the purposes of said corporation; and that such bonded indebtedness be represented by seventeen thousand five hundred bonds of said company in the sum or denomination of one thousand dollars each, negotiable in form, payable on the 1st day of September, A. D. 1939; or, if default be made in the payment of any installment of interest or any of said bonds when the same shall be payable and payment thereof shall be demanded in writing, and such installment of interest shall remain unpaid for six months after such demand, the whole amount of the principal of said bonds shall become due and payable; said bonds to bear interest at the rate of five per cent per

annum, payable semi-annually, in said gold coin, above mentioned, on the 1st day of September and the 1st day of March each year, either at the office of said company in the said city of, or at the office of its financial agency in the city of New York; and

Resolved, Further, That such bonded indebtedness be secured by a deed of trust of the railroad and railroad lines of said company, and all the franchises and rights of every kind and nature whatsoever which said company now has, and which it may hereafter acquire; which deed of trust shall be to such trustee or trustees and with such provisions, and upon such terms and conditions, and under such regulations and restrictions, as the board of directors of the company shall deem proper; and

Resolved Further, That the board of directors of the company be and it is hereby authorized, empowered and directed to take any and all steps that it shall deem necessary or proper in or about the execution and delivery of said deed of trust.

The certificate should be as follows:

§ 886. Certificate of Proceedings Authorizing Increase of Bonded Indebtedness.

We, the undersigned, John D. Wasson, president of the Market Street Railway Company, and Abner Moxey, the secretary of said company, and William Ross, A. L. Smith, John Russ, John D. Wasson, George Utley, Charles F. Hutton, Louis Jackson and Thomas Magnus, constituting a majority of the directors of said company, do hereby certify and declare as follows, viz.:

That at a regular meeting of the board of directors of the Market Street Railway Company, held at the office of said company at No. street, in the county of, on the 5th day of March, 1927, the following resolution was duly passed and adopted by the affirmative vote of a majority of the directors and entered upon the minutes of said corporation, to wit:

(Here insert resolution.)

And that, in pursuance of said resolution a notice of which the following is a copy, to wit:

(Here insert notice.)

was published as specified in said resolution calling said meeting, viz., in the " " (which is a newspaper published daily in the said city of, county of, aforesaid) at least once a week, for each week from the said 5th day of March, A. D. 1927, to the 15th day of May, A. D. 1927, in all respects as required by said resolution, and by law; and in addition to such notice by publication the secretary of said company, in pursuance of said resolution, addressed a notice to each of the stockholders of said corporation (all of whose names then appeared and now appear on the books of the corporation), sufficiently addressed to their respective places of residence, all of such places of residence being then and now known, and mailed said respective notices to said respective

stockholders, by depositing in the United States postoffice at said city of, envelopes containing said notices respectively each properly addressed to said respective stockholders and each with the proper postage prepaid thereon, more than thirty days before the said 15th day of May, A. D. 1927.

That the "....." is and was at all times mentioned herein the newspaper designated in the by-laws of the said corporation as the newspaper in which are to be published all notices of meetings of the directors or of the stockholders of said corporation. (If no such newspaper is designated in the by-laws, state that fact.)

And we further certify and declare that at the time and place specified in said notice, to wit, on the 15th day of May, 1927, at 10 o'clock in the forenoon of said day, at the principal place of business of said company, in the building where the board of directors of said company usually meets, viz., at the office of said company, No. street, in said city of, all the stockholders of said company appeared in person or by proxy;

That at said meeting the following resolution was duly passed by a vote representing at least two-thirds of the subscribed capital stock:

(Here insert resolution.)

That the total number of subscribed shares of the capital stock of said corporation at said time was 53,700;

That the amount of stock represented at said meeting of said corporation was \$53,000,000;

That the total vote on said resolution in the affirmative was 53,000 shares;

That the total vote in the negative on said resolution was none;

That the amount to which the bonded indebtedness has thereby been increased is \$27,500,000.

In Witness Whereof, We have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed at the city of, county of, state of, this 15th day of May, 1927.

JOHN D. WASSON,
President.

ABNER MOXEY,
Secretary.

WILLIAM ROSS,
A. L. SMITH,
JOHN RUSS,
GEORGE UTLEY,
JOHN D. WASSON,
CHARLES F. HUTTON,
LOUIS JACKSON,
THOMAS MAGNUS,

(Corporate Seal.)

Directors of the Market Street Railway Company and constituting a majority of the board of directors of said company.

(Add verification. See section 868, ante.)

§ 887. Creating Bonded Indebtedness Without Stockholders' Meeting.—In some states if there be no bonded indebtedness already on the corporation, and it be desired to create one, the meeting by the stockholders may be dispensed with. The intention to originally create a bonded indebtedness is then signified by a resolution adopted by the unanimous vote of its board of directors or trustees at a regular meeting or at a special meeting called for that purpose. Care should be taken to properly call the meeting, stating in the notice the purpose thereof. The notice may be as follows:

§ 888. Notice of Directors' Meeting to Consider Creation of Bonded Indebtedness.

Office of

MARKET STREET RAILWAY COMPANY,
17 Montgomery Street.

San Francisco, Cal., April 29, 1927.

To Mr. George Utley:

Please take notice that a special meeting of the board of directors of the Market Street Railway Company will be held at the offices of said corporation, 17 Montgomery street, San Francisco, California, on the 5th day of March, 1927, at 2 o'clock p. m., for the purpose of considering a proposition to create a bonded indebtedness of said corporation, and to transact such other business as pertains thereto.

By order of the president,

ABNER MOXEY, Secretary.

§ 889. Assent by Stockholders to Creation of Bonded Indebtedness.

We, the undersigned, stockholders of Market Street Railway Company, holding all of the subscribed capital stock of said corporation, hereby assent to it in writing, and approve the resolution creating a bonded indebtedness of said corporation, and adopted by a majority of the board of directors at a special meeting called for that purpose, and held at the office of said corporation at No. street, in the county of

....., on the 5th day of March, 1927, which said resolution as adopted reads as follows, to wit:

(Here insert resolution.)

	Shares.
A. L. Smith.....
John D. Wasson.....
Thomas Magnus
Charles F. Hutton.....
Abraham Weiss
William Ross
John Russ
George Utley
Louis Jackson

§ 890. Certificate of Proceedings Authorizing the Creation of a Bonded Indebtedness.—The certificate should be as follows:

We, the undersigned, John D. Wasson, president of the Market Street Railway Company, a corporation, and Abner Moxey, the secretary of said company, and William Ross, A. L. Smith, John Russ, John D. Wasson, George Utley, Charles F. Hutton, Louis Jackson and Thomas Magnus, constituting a majority of the directors of said company, do hereby certify and declare as follows, viz.:

That at a regular meeting of the board of directors of the Market Street Railway Company, held at the office of said company at No. 17 Montgomery street, in the city of San Francisco, state of California, on the 5th day of March, 1927, the following resolution was unanimously passed and adopted by the affirmative vote of a majority of the directors and entered upon the minutes of said corporation, to wit:

(Here insert resolution.)

That the secretary of this corporation, on the 5th day of March, 1927, addressed by mail, with postage fully prepaid, a copy of the above resolution to each of the stockholders of said corporation whose names appear on the books of said company, as sufficiently addressed, at his place of residence (the place of residence of each of said stockholders then and now being known to said secretary), and that the stockholders to whom said copies of said resolution were addressed and mailed, as aforesaid, were, on said 5th day of March, and now are, all the stockholders of said corporation;

That thereafter, and on or before the 8th day of March, 1927, all the stockholders of said corporation, representing eighty-five (85) shares of the capital stock of said corporation, and holding all of the subscribed and issued capital stock of said corporation, filed with the secretary of said corporation their written assents to the said resolution, adopted by the unanimous vote of the board of directors, as aforesaid, at the meeting of said board held on the 5th day of March, 1927, thereby ratifying and con-

firming the same in all respects as required by law; said assent is as follows:

(Here insert assent of stockholders.)

In Witness Whereof, We have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed at the city of San Francisco, state of California, this 15th day of May, 1927.

JOHN D. WASSON,

President.

ABNER MOXEY,

Secretary.

WILLIAM ROSS,

A. L. SMITH,

JOHN RUSS,

GEORGE UTLEY,

JOHN D. WASSON,

CHARLES F. HUTTON,

LOUIS JACKSON,

THOMAS MAGNUS,

(Corporate Seal.)

Directors of the Market Street Railway Company and constituting a majority of the board of directors of said company.

(Add verification. See section 868, ante.)

§ 891. Bond Underwriting Agreement.

Memorandum of Agreement, By and between the American Tube Company, a corporation of the state of Colorado, hereinafter designated as the Tube Company, and the several signers hereof, hereinafter called the subscribers:

Whereas, the Tube Company has heretofore made its certain indenture of mortgage to the Metropolitan Trust Company to secure an issue of \$1,000,000 of 6 per cent twenty-five-year sinking fund gold bonds, all of which have been legally issued, and it is now proposed to secure an underwriting of \$300,000 of said bonds, for the purpose of supplying the said company with additional working capital and to retire certain of its outstanding obligations;

Now, we the undersigned subscribers do hereby (each for himself, and not for any of the others), agree with each other and separately with the Tube Company, to subscribe to such bonds, to the extent set opposite our respective signatures hereto, and we agree to purchase the same and to pay therefor at par and accrued interest, at the time and in the manner and under the conditions hereinafter set forth:

1. This subscription shall become binding only when bonds equaling \$300,000 par value shall have been subscribed for.

2. Payment for the said bonds shall be made as follows: 10 per cent of the par value thereof on November 1, 1927, or earlier, if called for by the

....., on the 5th day of March, 1927, which said resolution as adopted reads as follows, to wit:

(Here insert resolution.)

	Shares.
A. L. Smith.....
John D. Wasson.....
Thomas Magnus
Charles F. Hutton.....
Abraham Weiss
William Ross
John Russ
George Utley
Louis Jackson

§ 890. Certificate of Proceedings Authorizing the Creation of a Bonded Indebtedness.—The certificate should be as follows:

We, the undersigned, John D. Wasson, president of the Market Street Railway Company, a corporation, and Abner Moxey, the secretary of said company, and William Ross, A. L. Smith, John Russ, John D. Wasson, George Utley, Charles F. Hutton, Louis Jackson and Thomas Magnus, constituting a majority of the directors of said company, do hereby certify and declare as follows, viz.:

That at a regular meeting of the board of directors of the Market Street Railway Company, held at the office of said company at No. 17 Montgomery street, in the city of San Francisco, state of California, on the 5th day of March, 1927, the following resolution was unanimously passed and adopted by the affirmative vote of a majority of the directors and entered upon the minutes of said corporation, to wit:

(Here insert resolution.)

That the secretary of this corporation, on the 5th day of March, 1927, addressed by mail, with postage fully prepaid, a copy of the above resolution to each of the stockholders of said corporation whose names appear on the books of said company, as sufficiently addressed, at his place of residence (the place of residence of each of said stockholders then and now being known to said secretary), and that the stockholders to whom said copies of said resolution were addressed and mailed, as aforesaid, were, on said 5th day of March, and now are, all the stockholders of said corporation;

That thereafter, and on or before the 8th day of March, 1927, all the stockholders of said corporation, representing eighty-five (85) shares of the capital stock of said corporation, and holding all of the subscribed and issued capital stock of said corporation, filed with the secretary of said corporation their written assents to the said resolution, adopted by the unanimous vote of the board of directors, as aforesaid, at the meeting of said board held on the 5th day of March, 1927, thereby ratifying and con-

firming the same in all respects as required by law; said assent is as follows:

(Here insert assent of stockholders.)

In Witness Whereof, We have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed at the city of San Francisco, state of California, this 15th day of May, 1927.

JOHN D. WASSON,
President.

ABNER MOXEY,
Secretary.

WILLIAM ROSS,
A. L. SMITH,
JOHN RUSS,
GEORGE UTLEY,
JOHN D. WASSON,
CHARLES F. HUTTON,
LOUIS JACKSON,
THOMAS MAGNUS,

(Corporate Seal.)

Directors of the Market Street Railway Company and constituting a majority of the board of directors of said company.

(Add verification. See section 868, ante.)

§ 891. Bond Underwriting Agreement.

Memorandum of Agreement, By and between the American Tube Company, a corporation of the state of Colorado, hereinafter designated as the Tube Company, and the several signers hereof, hereinafter called the subscribers:

Whereas, the Tube Company has heretofore made its certain indenture of mortgage to the Metropolitan Trust Company to secure an issue of \$1,000,000 of 6 per cent twenty-five-year sinking fund gold bonds, all of which have been legally issued, and it is now proposed to secure an underwriting of \$300,000 of said bonds, for the purpose of supplying the said company with additional working capital and to retire certain of its outstanding obligations;

Now, we the undersigned subscribers do hereby (each for himself, and not for any of the others), agree with each other and separately with the Tube Company, to subscribe to such bonds, to the extent set opposite our respective signatures hereto, and we agree to purchase the same and to pay therefor at par and accrued interest, at the time and in the manner and under the conditions hereinafter set forth:

1. This subscription shall become binding only when bonds equaling \$300,000 par value shall have been subscribed for.

2. Payment for the said bonds shall be made as follows: 10 per cent of the par value thereof on November 1, 1927, or earlier, if called for by the

American Tube Company; 90 per cent of the par value thereof (with accrued interest) on December 1, 1927.

3. American Tube Company agrees, in consideration of said subscriptions, to deliver or cause to be delivered, to each of the subscribers, upon final payment being made for said bonds, an amount of the 7 per cent cumulative preferred stock of the said Tube Company, equaling 25 per cent, and an amount of the common stock of the said Tube Company equaling 75 per cent of the par value of such subscription.

4. The Tube Company shall have the right subject to the provisions of paragraph 6 hereof, and is hereby authorized at any time prior to sixty days before the date named for the final payment to sell, at private sale or public offering, any or all of said bonds at par, for account of the subscribers, accompanied by stock in an amount not to exceed of preferred stock $12\frac{1}{2}$ per cent, and of common stock $37\frac{1}{2}$ per cent, of the par value of the bonds so sold; and the remainder of the stock provided by paragraph 3 to accompany said bonds, shall be divided among the subscribers proportionately to the amount of their underwriting.

5. Should the said bonds, or all of them, not have been sold by said Tube Company prior to the 2d day of October, 1927, there shall be issued, without expense to the subscribers hereto, in good form and manner, by publication or otherwise, a prospectus dated New York, offering for public subscription the said bonds (or so many of them as shall have not been previously sold), accompanied by not to exceed $12\frac{1}{2}$ per cent in preferred stock, and $37\frac{1}{2}$ per cent in common stock of the par value of bonds so offered; said prospectus to be published at least three successive days, unless subscription should be sooner filed, in at least two daily papers in each of the cities of Philadelphia, New York, and Pittsburgh. If all the bonds offered by said prospectus shall be taken by outside subscription and paid for, or subscribed for by responsible parties, satisfactory to the Tube Company, within ten days after the first publication of said prospectus, the subscribers shall not be required to take up any of the said bonds by them underwritten, but shall receive from the proceeds of the sale of said bonds, the return of the 10 per cent cash payments made by the underwriters thereon, together with $12\frac{1}{2}$ per cent in preferred and $37\frac{1}{2}$ per cent in common stock. If any of the bonds offered as aforesaid, are not taken and paid for, or subscribed for by responsible outside parties, satisfactory to the Tube Company within ten days after the first publication of said prospectus, the subscribers will, on the 1st day of December, 1927, take and pay for, at par and accrued interest, less 10 per cent of the par value thereof, paid thereon, such proportion of such remaining bonds as the amount of bonds underwritten by us bears to the total amount of bonds offered by the prospectus. A cash commission of 10 per cent shall be allowed the underwriters on final settlement on the par value of all bonds taken and paid for by them.

6. The right is reserved to any subscriber thereto at any time prior to the public offering above referred to, to withdraw any portion of his bonds from such public offering by written notice to the Tube Company, and

payment therefor at par and accrued interest (less the 10 per cent cash commission above provided for) and in case of such withdrawal and payment, the subscriber shall receive his bonds and the accompanying stock and shall agree not to offer the same for sale prior to December 2, 1927.

7. The subscribers consent to the assignment of this contract by the Tube Company to any financial institution, or institutions as collateral security for the loan of money, not exceeding the amount of the par value of said bonds, at any time before the 1st day of December, 1927, and in the event of such assignment such financial institution or institutions shall be subrogated to all the rights of the Tube Company, under and pursuant to this agreement.

8. Deliveries in payment shall be made at the office of the Tube Company, 112 Templeton Building, New York City, or at such other place as the Tube Company may elect in writing, by proper notice to the subscriber.

Dated this day of October, 1927.

(Corporation Seal.)

Attest:

By.....

President.

.....

Secretary.

Subscribers.	Address.	Par Value of Bonds Underwritten.
.....
.....

§ 892. Conditional Subscription to Bonds.

This agreement, made this 10th day of August, 1927, by and between the Dayton and Kingston Railroad Company, a corporation organized and existing under the laws of West Virginia, and James Sterling of New York, parties of the first part, and the Rolling Mill Company of America, hereinafter called the Rolling Mill Company, party of the second part, witnesseth:

That, for and in consideration of the performance of the covenants hereinafter set forth to be done and performed by the party of the second part, the parties of the first part hereby agree to convey or cause to be conveyed to the Rolling Mill Company about fifteen acres of land for the site of its proposed works, to be located on the land lately owned by the heirs of Jas. N. Baird, deceased, by deed of general warranty, free from all liens and encumbrances, which deed shall be executed and delivered within ten days from this date;

And will run in and operate a railroad siding or switch of standard gauge along the front and along the rear of the buildings to be located and erected on the said site, free of charge or cost (except as hereinafter provided), to the said Rolling Mill Company;

And will take, or cause to be taken fifty thousand dollars (\$50,000) at par value, of the first mortgage 6 per cent bonds of the Rolling Mill Company, out of a total issue not to exceed one hundred and fifty thousand

dollars (\$150,000), to be executed and issued when the said mill company shall have expended one hundred thousand dollars (\$100,000) on buildings, machinery and equipments for same, secured by a deed of trust or mortgage on all the property of said Rolling Mill Company, in which deed of trust the Bank of, at, shall be named as trustee and certifying agent;

And the parties of the first part further agree to convey or cause to be conveyed to the Rolling Mill Company by deed of general warranty, free from all liens, except the lien for the unpaid purchase money one hundred and fifty acres, more or less, of the Lower Bridgeport vein or seam of coal (to be drift coal), with the usual mining rights, situate on the line of the said railroad at a cost not exceeding fifty dollars (\$50) per acre, and the payments therefor to be made one-third cash at the time the deed for said coal is executed, which payment is to be credited upon and deducted from the twenty thousand dollars (\$20,000) of bonds hereinafter provided for, and the residue is to be paid in one, two, and three years from that date, with a vendor's lien retained for the securing of the unpaid purchase money and interest;

And the parties of the first part further agree to transport the coal from the said tract or the mines open thereon to the siding of the Rolling Mill Company's proposed plant, at a cost of 5 cents per net ton.

The parties of the first part further agree to pay to the Rolling Mill Company the sum of twenty thousand dollars (\$20,000) as a bonus and inducement for the location of said company's proposed plant on the line of the Dayton and Kingston Railroad on said Baird land, payable in one, two, and three months from this date, and to pay all taxes on the Rolling Mill Company's property situate on the said land for the first five years from July 1, 1927;

Parties of the first part further agree that until satisfactory freight rates are arranged with the Ogden and Chicago Railroad Company or some competing or connecting lines they will make the charge for switching between the O. and C. Railroad connections at Hinton, West Virginia, and the Rolling Mill Company's plant, over the line of the Dayton and Kingston Railroad, \$1 per car for incoming and outgoing freights; and after satisfactory freight rates have been arranged with connecting roads, will charge an agreed rate with such connecting railroad, which charge is to be absorbed or included in the freight rates charged by such connecting line.

The parties of the first part further agree that if the Ogden and Chicago Railroad, or its connecting lines, refuse to allow the usual reduction in freight rates on construction materials employed in building said plant and equipping the same, they shall pay the said Rolling Mill Company the difference between the rates charged and the reduced rates charged on construction materials for plants erected on the said Ogden and Chicago Railroad Company's lines.

And in consideration of the performance by the parties of the first part of the covenants and agreements hereinbefore set forth to be done and performed by the said parties of the first part, the said Rolling Mill Com-

pany of America hereby agrees that it will, without avoidable delay, locate, construct and put into operation, on the site aforesaid, a rolling mill for the manufacture of black sheets, tin and terne plates; and continue to operate the same, strikes and unavoidable hindrances, and delays excepted, for a term of five years; and give employment to about 500 work people.

The party of the second part further agrees that it will execute a mortgage or deed of trust upon all of its property, after it shall have expended the sum of one hundred thousand dollars (\$100,000) in buildings, machinery and equipments, to secure the sum of one hundred and fifty thousand dollars (\$150,000) of first mortgage bonds, bearing interest at six per cent (6%), payable semi-annually, designating the Bank of Alleghany Valley as trustee and certifying agent.

In Witness Whereof, The Dayton and Kingston Railroad Company has caused these presents to be signed in its corporate name by its president, and the seal thereof to be affixed, attested by its secretary; and the said James Sterling has signed and sealed the same, the day and year first above written; and the said Rolling Mill Company of America has caused these presents to be signed in its corporate name by its president, and the corporate seal to be thereto affixed, attested by its secretary, the day and year first aforesaid.

DAYTON AND KINGSTON RAILROAD COMPANY.

(Seal.)

By JAMES STERLING,

Attest:

President.

M. R. JAMESTOWN,

Secretary.

(Seal.)

ROLLING MILL COMPANY OF AMERICA.

Attest:

By E. R. KING,

G. M. MOWRY,

President.

Secretary.

§ 893. Form of Bonds and Bond Mortgage.—The form of the bonds depends upon the terms and conditions under which they are issued. These vary greatly according to the market in which the bonds must be disposed of. Bonds are generally secured by a mortgage or trust deed, the following being a typical form:

§ 894. Corporate Bond.

United States of America.

State of

RICH VALLEY CANAL COMPANY.

No., 5 per cent gold bond.

Know All Men by These Presents: That the Rich Valley Canal Company, a corporation duly organized and existing under the laws of the state of, U. S. A., and having its principal place of business in the city of

....., county of, state of, for value received, hereby promises to pay to the bearer, at the office of the Safe Security Trust Company, in the city of, county of, state of, the sum of five hundred dollars (\$500) in gold coin of the United States of America, of the present standard of weight and fineness, on the 1st day of January, in the year of our Lord, one thousand nine hundred and forty, with interest thereon, from the 1st day of January, A. D. 1927, until paid, in like gold coin, at the rate of five (5) per cent per annum, payable semi-annually on the 1st day of January and the 1st day of July in each year, upon the presentation and surrender of the annexed coupons authenticated by the signature or the facsimile signature of the secretary, as they severally mature, and in case of default in the payment of any of said coupons for a period of six months after such maturity and presentation, the principal of this bond may become due and payable in the manner, and with the effect, and subject to the conditions provided and specified in the mortgage or trust deed hereinafter mentioned, securing the payment of this issue of bonds.

This bond is one of a series of five hundred of like form, tenor, effect, amount and date, numbered consecutively from one (1) to five hundred (500), both inclusive, issued under and in accordance with the terms and conditions of said trust deed or mortgage and limited in amount to two hundred and fifty thousand dollars (\$250,000), the same having been duly authorized by the board of directors and by the unanimous vote of the stockholders of the said Rich Valley Canal Company, which vote was given at a meeting of said stockholders duly and legally called for that purpose and held in the manner prescribed by law on the 15th day of May, A. D. 1927, after due and legal notice of such meeting, given as required by law; and secured by a mortgage or trust deed bearing even date herewith, duly authorized and executed by said Rich Valley Canal Company, to the Safe Security Trust Company, therein mentioned as trustee for the holders of said bonds upon the property used, had, held and owned by said obligor, in connection with and comprising its plant and system of works, and upon all property that may hereafter be acquired or constructed for like purposes.

This bond shall pass by delivery, unless registered on the books of the trustee, but after registration duly endorsed thereon, no transfer except upon said books shall be valid, unless the last registration shall have been to bearer.

This bond shall not become valid and obligatory until authenticated by the certificate of the said Safe Security Trust Company, the trustee named in said mortgage or trust deed endorsed hereon, or its lawful successor as trustee.

In Witness Whereof, The said Rich Valley Canal Company has caused its corporate seal to be hereunto affixed and its corporate name to be subscribed hereto by the president and secretary thereof, this 31st day of

May, A. D. 1927, and the attached coupons to be authenticated by the signature, or facsimile signature, of its secretary lithographed thereon.

RICH VALLEY CANAL COMPANY.

By JOHN D. WHITLOCK,

(Corporate Seal.)

President.

And by EMERSON SHARP,

Secretary.

§ 895. Coupon.—To each of said bonds will be attached sixty coupons, numbered from one (1) to sixty (60), the first of which will read as follows:

No. 1.

\$12.50.

Rich Valley Canal Company will pay to the bearer on the 1st day of January, A. D. 1927, twelve and 50/100 dollars (\$12.50) in United States gold coin, being six months' interest on its bond, numbered, at the office of the Safe Security Trust Company, in the city of, state of

EMERSON SHARP, Secretary.

§ 896. Trustee's Certificate.—Upon each of said bonds should also appear a certificate signed by the said trustee, or its successor, through and by the proper officers, as follows:

It is hereby certified that the within bond is one of a series of five hundred (500) bonds described in the trust deed therein mentioned.

SAFE SECURITY TRUST COMPANY, Trustee.

By HENRY SIGISMOND, President.

Attest:

ROBT. REAY, Secretary.

(Corporate Seal.)

§ 897. Registration Blank.—And on the back of each bond, in addition to the ornamental, and engraved endorsement, setting forth in brief what it is, by what company issued, amount, date of maturity, rate of interest, and when payable, should also appear a blank for registration; that is, if the issue be of registered bonds. Said blank may be as follows:

Date of Registry.	In whose name Registered.	Transfer Agent.
.....
.....

§ 898. Stabilized Debenture Bond.

United States of America.

State of Delaware.

No. M.

\$1,000.

RAND KARDEX COMPANY, INC.**Seven Per Cent Thirty Year Stabilized Debenture Bonds.**

Registered and safeguarded as to purchasing power of both principal and interest.

Rand Kardex Company, Inc., a Delaware corporation, hereinafter termed the "company," for value received, hereby promises to pay to the registered holder hereof on the first day of July, 1955, at the principal office of the Buffalo Trust Company, in the city of Buffalo, state of New York, such sum of money as shall possess the present purchasing power of one thousand dollars (\$1,000) with interest thereon at the rate of seven per cent per annum, payable quarterly on January 1st, April 1st, July 1st and October 1st, in such sums as shall, at the respective times of payment, equal in purchasing power one and seventy-five one-hundredths per cent (1.75%) of said purchasing power of one thousand dollars (\$1,000), all to be based upon an index number of the prices of commodities defined and fixed in accordance with the amplified statement below.

The company declares that it is its intention, by this obligation, to afford the holder hereof a steadier income in terms of real purchasing power than that obtainable from any other form of obligation, by providing herein for the increase or decrease of the sums of money payable hereunder when the purchasing power of the dollar falls or rises, in the sense that the index number of the prices of commodities rises or falls.

This bond is one of a duly authorized issue of bonds of the company known as its "Seven Per Cent Thirty Year Stabilized Debenture Bonds" (hereinafter referred to as the "bonds") limited to the aggregate principal amount of five hundred thousand dollars (\$500,000) in present purchasing power, issued and to be issued under a trust indenture dated July 1, 1925 (hereinafter called the "indenture"), duly executed by the company to the Buffalo Trust Company, of Buffalo, N. Y., as trustee (hereinafter called "trustee"), to which indenture and indentures, if any supplemental thereto, reference is hereby made for a statement of the rights and remedies of the holder hereof.

Subject to the provisions for registration hereof this bond is intended to have, to the extent permitted by law, all the characteristics of a negotiable instrument, and the principal and interest will be paid without regard to any equities between the company and the original or any intermediate registered holder or holders hereof.

At the option of the company all of said bonds, or any part thereof, may be redeemed on any quarterly interest payment day prior to maturity, upon at least sixty (60) days' notice in writing to the registered holder hereof, as provided in said indenture, at the principal amount and accrued interest, together with a premium of three per cent (3%) of the principal

amount if redeemed on or before July 1st, 1935; or with a premium of two per cent (2%) of the principal amount if redeemed after July 1st, 1935, and on or before July 1st, 1945; or with a premium of one per cent (1%) of the principal amount if redeemed after July 1st, 1945, and on or before April 1st, 1955. The amount to be paid upon any such redemption, both as to principal and interest, shall be determined in accordance with the provisions hereof in respect to the fixing of the payments to be made in accordance with the purchasing power of the dollar at the time of payment. If less than the total number of bonds issued and outstanding under said indenture are to be redeemed as aforesaid, the particular bond or bonds so to be redeemed may be determined by the board of directors of the company:

In case of certain defaults specified in said indenture, this bond and all other bonds of this issue may be declared and may become due and payable in the manner and with the effect provided in said indenture.

This bond is transferable only by the registered owner in person or by his duly authorized attorney, upon the books of the company, maintained and kept for that purpose at the principal office of the trustee in the city of Buffalo, N. Y.

No recourse shall be had for the payment of the principal of, or interest on, this bond, or for any claim based thereon, or otherwise, in respect thereof, or of said indenture against any incorporator, stockholder, officer or director, past, present or future, of the company, or of any successor corporation, whether by virtue of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise, such liability being by the acceptance hereof, and as part of the consideration of the issue hereof, expressly released.

This bond shall not become obligatory until it shall have been authenticated by the execution by the trustee of the certificate hereon endorsed.

The United States internal revenue documentary stamps required by act of Congress, approved November 23, 1921, have been affixed to said indenture.

Amplified Statement of Method of Fixing Amounts to Be Paid as Principal and Interest Hereunder.

The index number of the prices of commodities employed hereunder shall be the well known index number of wholesale prices of the United States Bureau of Labor Statistics, as published each month, subject to such modifications and amplifications and changes of method in making and computing the same as shall, or may be made, by said bureau from time to time.

If as of any due date, the index number of the prices of commodities shall remain at approximately the present level, that is to say, if it does not rise or fall as much as one-tenth part of the level fixed as of July 1, 1925, i.e., 157.5, then the amount to be paid as principal shall be one thousand dollars (\$1,000); and the amount to be paid as interest on any quarterly interest date shall be seventeen dollars and fifty cents (\$17.50).

In case the index number as of any due date shall be found to be more or

less than that fixed for July 1, 1925, by as much as one-tenth part of said index number of July 1, 1925, then for every full one-tenth rise or fall of said index number, there shall be added or subtracted respectively one-tenth of the payment then due, said one-tenth being \$1.75 for any quarterly payment of interest and \$100 for the principal sum.

The index number measuring the present price level as of July 1, 1925, shall be the average of said index numbers for the three calendar months preceding July 1, 1925, which have been published on or before July 1, 1925, namely, the index numbers for March, April and May of 1925, which average is 157.5 on the basis of 100 as representing the 1913 price level.

The index number measuring the price level as of July 1st of any other year hereunder shall be the average of the said index numbers for March, April and May of such other year, and the index number as of October 1st in any year, shall be in like manner the average of the said index numbers for the preceding June, July and August, and the index number as of January 1st in any year shall be in like manner the average of the said index numbers for the preceding September, October and November, and the index number as of April 1st in any year, shall be in like manner the average of the said index numbers for the preceding December, January and February.

Since one-tenth of the normal quarterly payment, i.e., \$17.50 is \$1.75, and since one-tenth of 157.5, i.e., the index number as of July 1, 1925, is 15.75, the application of the foregoing principles may be illustrated by the following tabulation:

(a) The quarterly payment of any due date shall be \$17.50 if the index number as of said date shall lie between 141.75 and 173.25.

(b) The quarterly payment at any due date shall be:

\$19.25,	if index is as large as 173.25, but not as large as 189.00
21.00,	if index is as large as 189.00, but not as large as 204.75
22.75,	if index is as large as 204.75, but not as large as 220.50
24.50,	if index is as large as 220.50, but not as large as 236.25
26.25,	if index is as large as 236.25, but not as large as 252.00
28.00,	if index is as large as 252.00, but not as large as 267.75

and so forth for still higher price levels.

(c) The quarterly payment at any due date shall be:

\$15.75,	if index is as small as 141.75, but not as small as 126.00
14.00,	if index is as small as 126.00, but not as small as 110.25
12.25,	if index is as small as 110.25, but not as small as 94.50
10.50,	if index is as small as 94.50, but not as small as 78.75
8.75,	if index is as small as 78.75, but not as small as 63.00
7.00,	if index is as small as 63.00, but not as small as 47.25

and so forth for still lower price levels.

(d) Likewise the principal sum at maturity shall be one thousand dollars (\$1,000) if the index number as of such date of maturity shall lie between 141.75 and 173.25; it shall be eleven hundred dollars (\$1,100) if the index number as of such date is as large as 173.25, but not as large as 189.00 and so forth for still higher price levels; it shall be nine hundred

dollars (\$900), if the index number is as small as 141.75, but not as small as 126.00 and so forth for still lower price levels. The same results would apply on redemption dates, if any, with the addition of the premiums above specified.

In case the United States Bureau of Labor statistics should discontinue the computation and publication of its said monthly index number of wholesale prices, or the publication thereof should be delayed so as to prevent its use hereunder, there shall be substituted therefor by the trustee, as specified more fully in said indenture, such other index number or method of ascertaining changes in the price level as resembles in the opinion of the trustee most closely the index number and method of arriving thereat of said bureau.

Unless otherwise directed in writing by the registered holder hereof, the company will mail checks to the registered holder hereof covering the quarterly interest payments addressed in accordance with the registered holder's postoffice address, as it appears on the books of the company.

Certain of the provisions of the said indenture may be amended by the written consent of the company and of the holders of eighty per cent (80%) of the principal amount of the bonds of this issue then outstanding given in writing or at a meeting of said holders as provided in said indenture.

In Witness Whereof, The company has caused this bond to be signed by its president, or by a vice-president, and its corporate seal to be hereunto affixed and attested by its secretary, or assistant secretary, as of the 1st day of July, 1925.

RAND KARDEX COMPANY, INC.

(Seal.)

By.....

President.

Attest:

.....

Secretary.

TRUSTEE'S CERTIFICATE.

This bond is one of the issue of bonds described in the within mentioned indenture.

BUFFALO TRUST COMPANY, as Trustee.

By.....

Vice-President.

Assistant Secretary.

No writing hereon except by an officer or agent of the company.

In Whose Name

Date of Registry.

Registered.

Registrar.

.....
.....
.....

§ 899. **Trust Deed Securing Corporate Bonds.**—The following is a model form of trust deed securing the payment of corporate bonds:

This Indenture, Made and entered into this 3rd day of September, A. D. one thousand nine hundred and twenty-seven, by and between Stockton Gas and Electric Corporation, a corporation duly organized and existing under the laws of the state of California, and having its office and principal place of business in the city and county of San Francisco, state of California, hereinafter styled the Company, the party of the first part, and Mercantile Trust Company of San Francisco, a corporation likewise duly organized and existing under the laws of the state of California, for the purpose, among others, of holding and administering property in trust, and having its office and principal place of business in the city and county of San Francisco, state of California, hereinafter styled the Trustee, the party of the second part,

Witnesseth: 1. Whereas, Heretofore, to wit: on the 28th day of August, one thousand nine hundred and twenty-seven, the board of directors of the Company at a special meeting of said board called for the purpose of creating or authorizing the creation of a bonded indebtedness of the Company, to the amount in the aggregate of \$1,500,000, as hereinafter provided for, and held at the office and principal place of business of the Company, at which every member of said board was present, by a resolution adopted by the unanimous vote of said board and the vote of every member thereof, and approved by the written assent of the stockholders of the Company holding all of the subscribed or issued capital stock of the Company, said assent having been filed with the secretary of the Company on the 29th day of August, one thousand nine hundred and twenty-seven, did originally create a bonded indebtedness of the Company in the amount of one million, five hundred thousand dollars (\$1,500,000), payable in United States gold coin of or equal to the present standard of weight and fineness, and did vote and direct that for said indebtedness bonds to the number of one thousand five hundred (1500) in the sum of one thousand dollars (\$1000) each, to be numbered consecutively from one (1) to one thousand five hundred (1500), both inclusive, be issued in the name and under the seal of the Company, dated on the 3rd day of September, one thousand nine hundred twenty-seven, each payable to the bearer, or in case of registration, to the registered owner thereof, on the 3rd day of September, one thousand nine hundred and sixty-seven, at the office of the said Trustee in the city and county of San Francisco, state of California, each bearing interest in like gold coin from the 3rd day of September, one thousand nine hundred twenty-seven, until paid, at the rate of six (6) per cent per annum, said interest to be payable on the 3rd day of March, and on the 3rd day of September of each year after the date of said bonds, at the office of the Trustee in San Francisco, California; and

2. Whereas, The said board of directors at the meeting aforesaid, and

in the manner and form and by the vote aforesaid, did further resolve that the said bonds should be in substantially the following form, that is to say:

United States of America.

State of California.

\$1000.

\$1000.

No.

(Vignette)

STOCKTON GAS AND ELECTRIC CORPORATION.

First Mortgage Six Per Cent Sinking Fund Forty Year Gold Bond.

Stockton Gas and Electric Corporation, a corporation organized under the laws of the state of California (hereinafter called the Company), for value received promises to pay to the bearer, or, if registered, to the registered owner of this bond, the sum of one thousand dollars (\$1000) in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the 3rd day of September, in the year nineteen hundred and sixty-seven (1967), with interest thereon from the 3rd day of September, nineteen hundred and twenty-seven, until the payment or redemption of this bond, at the rate of six (6) per cent per annum, payable semi-annually in like gold coin, on the 3rd day of March and the 3rd day of September in each year, in accordance with and upon the presentation and surrender of the interest coupons hereunto annexed as they severally become due. Both principal and interest shall be payable at the office of the Mercantile Trust Company of San Francisco, in San Francisco, California (hereinafter called the Trustee), or at the office of its successor as trustee of the trusts declared in the mortgage or deed of trust hereinafter mentioned.

If default shall be made in the payment of interest on this bond, and if such default shall continue for a period of six (6) months, the principal of this bond may be declared due and payable in accordance with the provisions of the said mortgage or deed of trust.

This bond is one of the series of bonds of the Company known as its "First Mortgage Six Per Cent Sinking Fund Forty Year Gold Bonds" of the denomination of one thousand dollars (\$1000) each, numbered from one (1) to fifteen hundred (1500), both numbers included, duly authorized and approved by the board of directors and stockholders of the Company in the manner and form prescribed by law, issued and to be issued in an amount not exceeding in the aggregate the principal sum of one million, five hundred thousand dollars (\$1,500,000) at any one time outstanding, all of which bonds are issued and to be issued under and are equally secured without preference, priority, or distinction of one bond over another by a mortgage or deed of trust dated September 3rd, nineteen hundred and twenty-seven, executed by the Company to the Trustee, to which mortgage or deed of trust reference is hereby made for a statement of the property mortgaged or pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured. All rights of action, as well

as other rights of the holder hereof, are subject to the provisions of said mortgage or deed of trust.

A sinking fund has been provided for in the said mortgage or deed of trust to be applied to the redemption of said bonds in the manner and upon the terms provided in said mortgage or deed of trust.

This bond may be redeemed at the option of the Company upon any date when interest shall be payable thereon upon the payment of one hundred and ten (110) per cent of the face value thereof, and interest to the date of redemption, in accordance with the provisions contained in said mortgage or deed of trust.

This bond may be registered by the owner thereof on the books kept by the Trustee for that purpose at its office, which registration shall be noted by written endorsement made hereon by the Trustee, and, after registration, and until transferred to bearer, no transfer of this bond shall be valid unless made upon such books of registry and noted hereon. Such transfer may be to bearer, which shall restore its transferability by delivery, and successive registration to a person named, or to bearer, at the option of each owner, may be made.

This bond shall not become obligatory for any purpose until the certificate endorsed hereon shall have been duly signed by the Trustee under said mortgage or deed of trust.

In Witness Whereof, Stockton Gas and Electric Corporation has caused these presents to be executed by its president and secretary thereunto duly authorized, and its corporate seal to be hereunto affixed, and the attached interest coupons to be authenticated by the facsimile signature of its secretary lithographed thereon, as of the 3rd day of September, one thousand nine hundred and twenty-seven.

STOCKTON GAS AND ELECTRIC CORPORATION.

By.....

President.

By.....

Secretary.

and,

3. Whereas, The said board of directors, at the meeting aforesaid and in the manner and form and by the vote aforesaid, did further resolve that to each of the said bonds, there should be attached eighty (80) interest coupons, numbered, respectively and consecutively, from one (1) to eighty (80), both inclusive, and also bearing the number of the bond to which they are attached, with the facsimile signature of the secretary of the Company lithographed thereon, each of said eighty (80) interest coupons representing the interest on such bond at the rate of six (6) per cent per annum for the period of six (6) months, in United States gold coin of or equal to the present standard of weight and fineness, and the dates of said coupons being filled so as to make them fall due successively at the end of every period of six (6) months after the 3rd day of September, one thousand nine hundred and twenty-seven, the first interest coupon to mature on the 3rd

day of March, one thousand nine hundred and twenty-eight, and that said coupons should be in substantially the following form, that is to say:

Coupon No. \$30.

On the 3rd day of, 19..., Stockton Gas and Electric Corporation will pay to the bearer at the office of the Mercantile Trust Company of San Francisco, or its successor as trustee of the trusts mentioned in the annexed bond, in the city and county of San Francisco, state of California, thirty dollars (\$30) in United States gold coin of or equal to the present standard of weight and fineness, being six months' interest then due on its First Mortgage Six Per Cent Sinking Fund Forty Year Gold Bond No., subject to the previous redemption of said bond.

.....
Secretary.

and,

4. Whereas, The said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further resolve that upon each of the said bonds should be endorsed a certificate to be executed by the Trustee, in substantially the following form, that is to say:

It is hereby certified that the within bond is one of the series of fifteen hundred bonds described in the mortgage or deed of trust therein mentioned.

MERCANTILE TRUST COMPANY OF SAN FRANCISCO.

By.....
Assistant Secretary.

and,

5. Whereas, the said board of directors at the meeting aforesaid and in the manner and form and by the vote aforesaid did further resolve that upon each of said bonds should be endorsed, for the registration thereof, a form substantially as follows, to wit:

(The blanks below to be filled only by an officer of the Trustee.)

Date of Registry.	In Whose Name Registered.	Registrar's Signature.
.....
.....

and,

6. Whereas, The said board of directors, at the meeting aforesaid and in the manner and form and by the vote aforesaid, did further authorize and direct that said bonds be signed by the president, or the vice-president, and the secretary of the Company in its corporate name, and as its corporate act, and under its corporate seal, and be delivered, each and all of them, for and on behalf of the Company, to the said Trustee; and

7. Whereas, The said board of directors at the meeting aforesaid and in the manner and form and by the vote aforesaid, to secure the payment of the said bonds and the interest thereon, did further authorize and direct that the Company make, execute, acknowledge, and deliver to the said Mercantile Trust Company of San Francisco, as trustee, this mortgage or deed of trust, upon and of all the real and personal property now owned by the Company and hereafter to be acquired by it during the life or term

of this mortgage or deed of trust, and the president and secretary of the Company were authorized and directed to execute, acknowledge, and deliver this mortgage or deed of trust to the said Mercantile Trust Company of San Francisco, as trustee, in the name of and for and on behalf of and as the act and deed of the Company, and to affix the corporate seal of the Company hereto, and a copy of this mortgage or deed of trust was incorporated in the said resolution as a part thereof and entered in the minutes of the meeting aforesaid (except its signatures, affidavits, certificates, and acknowledgments) and forms part of the said resolution in all its terms and provisions; and

8. Whereas, Subsequently to the said meeting of the board of directors, to wit: on the 28th day of August, one thousand nine hundred and twenty-seven, the secretary of the Company did address, by United States mail with the postage thereon fully prepaid, a copy of the said resolution passed and adopted at the said meeting of the board of directors of the Company, to each of the stockholders of the Company whose name appeared upon the Company's books as sufficiently addressed or identified at said stockholder's place of residence, if known, and if not known, then at the city and county of San Francisco, state of California, that being the place in which the office and principal place of business of the Company is situated; and

9. Whereas, Thereafter, to wit: on the 29th day of August, one thousand nine hundred and twenty-seven, the written assent of the stockholders holding all of the subscribed or issued capital stock of the Company was filed with the secretary of the Company approving said resolution adopted by the said board of directors at the meeting aforesaid, and no dissent or dissents thereto was or were filed; and

10. Whereas, After the filing of the said written assent of the stockholders holding all of the subscribed or issued capital stock of the Company, as aforesaid, and prior to the execution and delivery of this mortgage or deed of trust, a certificate under the corporate seal of the Company, and signed by its president and secretary, and by all the members of the board of directors of the Company and verified by the oath of the president and secretary of the Company, setting forth the total number of subscribed or issued shares of the capital stock of the Company, the said resolutions of the said board of directors and the mailing of copies thereof to the stockholders of the Company, as hereinabove recited, and the filing with the secretary of the Company of the written assent of the stockholders holding all of the subscribed or issued capital stock of the Company, approving the same, as hereinabove recited, the amount of the bonded indebtedness so originally created, the total amount of the stock represented by the said written assent so filed with the secretary of the Company, and that no dissent or dissents thereto was or were so filed, and the whole vote acting in the premises, by which the creation of said bonded indebtedness was accomplished, and showing a compliance with all the requirements of subdivision fifth of section three hundred and fifty-nine (359) of the Civil Code of the state of California, was filed in the office of

the secretary of state of the state of California, and a copy of said certificate certified by the secretary of state was filed in the office of the county clerk of the city and county of San Francisco, state of California, that being the city and county in which the principal place of business of the corporation is situated, as required by law;

Now, Therefore, This Indenture Witnesseth: That the Company in consideration of the premises and of one dollar (\$1), to it paid by the said Trustee, the receipt whereof is hereby acknowledged, and in order to secure the payment of the said bonds and coupons and the faithful observance and performance of all the covenants and agreements in this instrument contained, has granted, bargained, sold, hypothecated, pledged, remised, released, conveyed, aliened, transferred, assigned, mortgaged, and confirmed and by these presents does grant, bargain, sell, hypothecate, pledge, remise, release, convey, alien, transfer, assign, mortgage, and confirm, unto the said Trustee, its successor and successors in the trusts hereby created, its and their assigns forever, all those certain lqts, tracts, and parcels of land, situate, lying, and being in the county of San Joaquin, state of California, particularly described as follows, to wit:

(Here insert description.)

Also, all and singular the company's plants, electric works, power houses, or other stations or buildings for the generation, transmission, or storage of power of electricity and the fixtures, fittings, and equipment thereof, including all dynamos, engines, boilers, transformers, meters, converters, switchboards, shafting, belting, and other appliances, and all transmission lines, conduits, feeders, poles, mast arms, brackets, pipes, cables, wires, insulators, lamps, and electric fixtures of every kind and nature whatsoever; all gas plants, gas holders, purifiers, gas mains, meters, and all buildings, apparatus, and appliances for the manufacture, transmission, or distribution of gas; all franchises, privileges, easements, rights of way, authorizing the erection, maintenance, or operation, upon, over, or under the streets, alleys, highways, or public places within any city, town, or village in the said county of San Joaquin, or upon, over, or under any private property within said county, of poles, wires, conduits, mains, pipes, or other structures or apparatus for the transmission or distribution of gas or electricity for any purpose whatever.

Together with all other real and personal property of every nature and description belonging to the Company, wherever situate, whether the same is specifically enumerated herein or not.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

Also all other property, real and personal, of whatsoever kind or nature, including shares of stock in and bonds of corporations, which the Company now has, or may hereafter acquire, during the life or term of this mortgage or deed of trust.

Also all leases, rights, patents, patent rights, inventions, licenses, fran-

chises, rights of way, easements, contracts, and agreements now held or owned by the Company, or in or under which it has any right, title, or interest, and all leases, rights, patents, patent rights, inventions, licenses, franchises, rights of way, easements, contracts, and agreements which shall be hereafter acquired, held, or owned by the Company, or to which it shall be a party, or in or under which it shall have any right, title, or interest, during the life or term of this mortgage or deed of trust.

To have and to hold the above described property, rights, privileges, immunities, and franchises unto said Trustee, its successor or successors in said trust, and their and each of their assigns, to its and their own proper use, benefit, and behoof forever, but in trust, nevertheless, under the terms of this mortgage or deed of trust, for the uses and purposes herein set forth.

For the further carrying into effect of this mortgage or deed of trust, the Company hereby appoints the said Trustee, and its successors in said trust, the attorney of the Company, in its name and behalf to ask, demand, and receive payment and delivery of any and all sums of money, notes, chattels, and effects assigned and transferred to the said Trustee by this mortgage or deed of trust, or intended so to be, and to give effectual releases and discharges in the name of the Company to the party or parties making such payment or delivery; and for any or all of the purposes aforesaid or of this instrument, the said Trustee may appoint an attorney or attorneys, agent or agents, and may from time to time revoke such appointments, and may use the name of the Company, and generally act in relation to the premises as it, or they, shall deem best, but such powers may only be exercised in case of the occurrence of some one of the defaults mentioned in Article IV.

ARTICLE I.

Said property, rights, privileges, and franchises, subject to the terms, conditions, and agreements herein contained, shall be held and disposed of by the said Trustee for the equal pro rata benefit and security of the person or persons who are or shall be the lawful owners of the said bonds, without preference of one bond over another, by reason of priority of issue, or of any act or thing whatsoever; provided, however, that until default shall be made in the payment of the principal or interest of said bonds, or some of them, or in the performance by the Company of any of the covenants of the said bonds or interest coupons, or of this mortgage or deed of trust, the Company shall possess, operate, maintain, and enjoy all the franchises, rights, and property of every kind conveyed by this mortgage or deed of trust and every part thereof, with the appurtenances, and take and use the tolls, income, rents, issues, and profits thereof.

ARTICLE II.

If the Company shall well and truly pay the principal of said bonds, and each of them, together with the interest thereon, when the same shall become due and payable, according to the true intent and meaning of these presents, and shall well and truly perform all the other things required by

these presents to be done by it, then and thereupon all the estate, right, title, and interest of the said Trustee hereunder shall cease and determine; otherwise this instrument shall remain in full force and effect.

ARTICLE III.

No interest coupon appertaining to any bond hereby secured, which in any way, on or after the date of the maturity thereof, shall be assigned, transferred, or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of default hereunder, to the benefit or security of this mortgage or deed of trust, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding and of all interest coupons on all bonds not so assigned, transferred, or pledged.

ARTICLE IV.

In case default shall be made in the payment of any interest on any bond hereby secured, and such default shall continue for a period of six months, or in case default shall be made in the payment of the principal of any such bond, or in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Company, and any such last mentioned default shall continue for a period of six months after written notice thereof to the president or secretary, or in their absence, to any director of the Company, from the Trustee, or from the holders of a majority or more in amount of the bonds hereby secured and at the time outstanding, then and thereupon, and at any time during the continuance of such default, the whole amount of the principal of said bonds, together with all accrued and unpaid interest, may, at the option of the said Trustee or of the holder or holders of one-third in amount of the bonds then outstanding (notwithstanding any provision to the contrary in said bonds), be declared immediately due and payable; notice of the exercise of such option is hereby waived, and the said Trustee shall not be required to signify such election in any manner other than by instituting proceedings to foreclose, whether by entry upon the premises, by beginning a suit or action for foreclosure, or by commencing publication of notice of the sale of the mortgaged property. In case of default or failure as aforesaid, or in case of default in the payment of said bonds or any of them when they fall due and become payable, it shall become lawful but not obligatory upon the said Trustee to enter upon and take possession of the mortgaged premises (making the entry upon any portion thereof in the name of the whole), and to operate and manage the property and business of the Company, collecting all the revenues, issues, and profits of the property and business until the net earnings and profits after the payment of all the reasonable and just charges and expenses of the said Trustee, its agents or attorneys, shall have been sufficient to repair and make good the defaults of the Company under these presents.

After default as aforesaid, the said Trustee may also, or instead of so doing and with or without taking any possession of the property, proceed

to sell and dispose of, by one sale or successively through several sales, all and singular the premises and property, rights, interests, and franchises hereby conveyed and mortgaged, or intended so to be, or such portion thereof as the Trustee may deem necessary, at public auction in said city and county of San Francisco, state of California, on such terms as to credits, partial credits, and security for payment as the said Trustee may think proper, having first given public notice of the time and place of such sale or sales by advertisement printed once a week for at least ten consecutive weeks in some newspaper published in said city and county of San Francisco, and no other notice to or demand whatsoever upon the Company, prior to such sale or sales, shall be necessary. The said Trustee is authorized to adjourn such sale or sales from time to time in its discretion, giving what it shall deem reasonable notice of the time and place to which the same may be adjourned. The said Trustee is hereby further authorized and empowered either in its own name or in the name of the Company, to make, execute, acknowledge, and deliver to the purchaser or purchasers at any such sale good and sufficient deeds of conveyance of the property sold; and any sale made as aforesaid shall be a perpetual bar, both in law and equity, against the Company, and all persons claiming by, through, or under it, from claiming the property, rights, interests, or franchises so sold, or any interest therein. And for the purpose of effecting such conveyance, the said Trustee is hereby constituted irrevocably the attorney of the Company. As affecting the title to any property purchased at any such sale the recitals of the said Trustee's deed of conveyance, relating to the time and manner of giving notice of any default, or to the time and manner of giving notice of such sale and to any other facts affecting the regularity or validity of such sale, shall not be open to contradiction or dispute by any party or parties, but shall conclusively be deemed to be true. The said Trustee or any one or more of the bondholders, or any person on its, or their behalf, may purchase the property at any sale of the mortgaged property whether made under the power of sale hereinbefore contained or pursuant to judicial decree, and the receipt of the said Trustee shall be a sufficient discharge to the purchaser or purchasers for his, or their, purchase money.

ARTICLE V.

The foregoing provision for foreclosure under the power of sale aforesaid is cumulative with the ordinary right of foreclosure by entry, by suit, or by action, and the said Trustee after default as aforesaid is hereby empowered to have and exercise at its option either or any of such rights and all remedies thereto pertaining, against all of the mortgaged property at one time and in one proceeding, or against portions of it successively in separate proceedings. If the property be disposed of in parcels, each purchaser shall take good title, notwithstanding that the proceeds of sale already received may have been sufficient to satisfy the debt hereunder. The determination of the said Trustee to institute foreclosure proceedings by suit or action, instead of by sale under the power aforesaid, shall not be construed as a waiver of the right of immediate possession on defaults declared, or of its right to the income, revenues, and profits of the Com-

pany. At any time after default as aforesaid, the said Trustee shall be entitled to the appointment of a receiver having such powers and duties and acting under such limitations as the court making the appointment may confer and impose. In case the said Trustee shall take possession or make sale of the mortgaged premises in pursuance of the provisions hereinbefore contained, any and all of the keys, books, and papers of the Company, in any way relating to the mortgaged property or the operation or management of the same, and all personal property in its possession, shall, upon request, be delivered by the Company to the Trustee or its agents; and it, or they, by itself or themselves, may take possession of such keys, books, and papers and personal property and hold and use the same without any hindrance or impediment whatsoever by or on the part of the Company, or of any person acting or claiming to act, by, through, or under it. By whatever method of procedure this mortgage or deed of trust may be foreclosed, the order or method of distributing any proceeds realized on the sale or sales of the property shall be as hereinafter provided. Outstanding bonds and interest coupons hereby secured may themselves be used in or toward the payment of the purchase money bid, in lieu of cash, at the net sum distributable thereon.

ARTICLE VI.

Out of the proceeds arising from such sale or sales the said Trustee shall first defray the expenses thereof (including the just and lawful charges for its services and expenses, and a reasonable allowance for attorney and counsel fees), and refund any advances or expenses reasonably incurred by it in operating, maintaining, or managing the property or business of the Company while in its possession, and all payments made for taxes, assessments, insurance, and other proper charges upon said premises and property. The balance of said proceeds shall be applied and paid as follows:

If said balance of such proceeds is sufficient therefor, to the payment of the whole amount of the principal of the bonds hereby secured and then outstanding whether then or thereafter due and payable, with interest at the rate of six (6) per cent per annum thereon up to the time of such payment, together with interest at like rate on overdue installments of interest. If such balance of such proceeds shall be insufficient to pay in full such whole amount of principal and interest as aforesaid then the principal and interest of said bonds shall be paid without preference or priority of principal over interest, or interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and unpaid interest, together with interest on overdue installments of interest; the foregoing provisions are, however, in each case, subject to the provisions hereinbefore made postponing rights of holders of interest coupons as provided in Article III; but the said Trustee shall not be in any way liable or responsible for paying any interest coupons contrary to the provisions of the said Article III. If, after payment of the principal of said bonds and all interest as aforesaid computed to the

time of making the payment, any balance of said proceeds still remains, the remainder shall be paid over to the Company, or its assigns.

ARTICLE VII.

Before proceeding to take possession of the mortgaged property, or to foreclose this mortgage or deed of trust (whether the foreclosure be made by sale under said power or otherwise), the said Trustee shall have the right first to require from the bondholders satisfactory indemnity against loss, expense, and liability that may be incurred by it in so doing; and upon the tender of such indemnity by the holder or holders of one-third in amount of the bonds at that time outstanding and unpaid, whether such indemnity shall have been previously requested or not, it shall be the duty of the said Trustee, in case of default on the part of the Company, occurring and continuing as provided in Article IV hereof, to take such action, pursuant to the terms of this mortgage or deed of trust, as the bondholders tendering the indemnity may in writing request; provided, however, that the said Trustee may at its option elect which proceeding it will adopt, whether to take possession of the mortgaged property, or to foreclose this mortgage or deed of trust by sale under said power or by suit or action, keeping always within the terms of this mortgage or deed of trust.

ARTICLE VIII.

No delay or omission by the said Trustee in exercising the rights and powers herein granted shall be held to exhaust or impair such rights and powers, or be construed as a waiver thereof. The said Trustee agrees, upon any default other than in the payment of interest on the said bonds, on the written request of the holder of any of said bonds, to give written notice to the Company of such default under this mortgage or deed of trust, as the bondholder requesting such notice to be given, shall allege to exist.

No holder of any bond or coupon hereby secured shall have the right to institute any suit or proceeding for the sale of the property subject to the lien hereof, or for the foreclosure hereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the said Trustee written notice of the default of which he complains, nor unless the holders of one-third ($\frac{1}{3}$) of the bonds hereby secured and then outstanding shall have made written request to the said Trustee for such action, or for action hereunder, and shall have given to the said Trustee a reasonable opportunity to take such action, and the said Trustee shall have neglected to take appropriate action thereon, nor unless they shall have offered to the said Trustee adequate security and indemnity against all loss, costs and liabilities to be incurred in the premises.

No bondholder or trustee hereunder shall under any circumstances have recourse to any personal, statutory or constitutional liability against any stockholder of the Company arising out of any provision herein, whether such liability now exists or shall hereafter accrue. But each such trustee and bondholder shall look for the payment of the bonds and interest

thereon, solely to the assets of the Company, it being understood that such assets shall not be considered as embracing any claim which might under any circumstances be enforceable either by the creditors of the Company, by a receiver in their behalf, or by the Company itself, against a stockholder, under any law now or hereafter in force, or against a stockholder by reason of any alleged insufficiency in the payment for shares of stock.

ARTICLE IX.

The said Trustee may from time to time release from the lien hereof any of the mortgaged property when in its judgment, based upon the certificate of some disinterested person, selected by the said Trustee with reasonable care for the purpose of investigating the question, other property of equal value is substituted therefor and subjected to the lien hereof, so that such release shall not impair the security of the bondholders or such property may be released from this mortgage or deed of trust upon the deposit by the Company with the said Trustee of an amount equal to the value of the property to be released, as appraised by such disinterested person and certified by him to the said Trustees in writing; and upon the receipt of such amount the Trustee may execute and deliver a release of the property in question, provided, however, that no property shall be released hereunder, unless at the time of such release it shall no longer be necessary or expedient to retain the same for the operation or maintenance or use of the property then subject to the lien of this indenture, or for use in the business of the Company. No such release shall be made unless the property to be released shall have been sold or the sale thereof, or the exchange of the same for other property, shall have been contracted for.

The proceeds of any and all such sales and all money received as compensation for any property subject to the lien of this indenture taken by exercise of the right of eminent domain shall be paid to and held by the Trustee hereunder and applied by it to one of the following purposes, namely:

- (a) To the purchase of other property, real or personal, for the benefit of the Company;
- (b) To additions, betterments, or improvements to property of the Company which shall then be subject to the lien of this indenture;
- (c) To the redemption of outstanding bonds of said issue which may be called for prior payment in accordance with the provisions of Article XII of this indenture.

It shall be the duty of the Trustee to apply the proceeds of any such sale to the purchase of other property or to such additions, betterments, or improvements, or to such redemption of bonds, only upon the written request of the Company, approved by a resolution of its board of directors. Any new property and all additions, betterments and improvements acquired and made in pursuance of the provisions of this article shall forthwith and without further conveyance become and be subject to the lien of this indenture, but if requested by the Trustee, the Company shall convey the same to the Trustee by appropriate conveyance, upon the trusts and for the purposes of this indenture.

The value of any property released hereunder or of any property substituted in lieu of property released, or purchased from the proceeds of sale of any released property, shall be determined by one or more disinterested appraisers appointed for the purpose by the Trustees, and the written appraisalment of the person or persons so appointed shall be a complete warrant to the Trustee in determining the value of any property released, purchased or substituted.

Property subjected to the lien hereof as a first mortgage before the execution of a release may be treated as substituted for property afterwards released, provided that said Trustee shall be notified in writing by the Company, at or before the actual acquisition of such additional property, that the same is intended as the basis of a future release.

All expense attendant upon any such investigation or appraisalment or otherwise upon the securing of such release, shall be paid by the Company, and the said Trustee shall not suffer or incur any loss or liability in the execution of any such release, or in the application of any money received by it hereunder, if it acts in good faith on the statement set forth in any certificate or appraisalment made as above provided.

The Company further agrees that it will from time to time make such additions to or repairs on the property, buildings, mains or other equipment connected with the mortgaged plant, as may be necessary to keep and maintain the same in first class repair and in condition for performing good and efficient service.

ARTICLE X.

The Company hereby expressly covenants and agrees that it will pay any and all taxes, assessments and governmental charges assessed or laid or which shall be assessed or laid upon the mortgaged premises or any part thereof or interest therein, or upon the said Trustee in respect to the same; that it will not suffer any lien superior to the lien hereof to attach to the mortgaged property, or any part thereof; that it will preserve and maintain all franchises and rights now or hereafter possessed by it; that it will conform to all lawful statutes, orders, ordinances and regulations affecting the corporation, its business and property, and that it will keep its buildings and property at all times insured, in insurance companies satisfactory to the Trustee, in such sums as shall approximate the reasonable value of the insured property; payable in case of loss to the said Trustee, as its interest may appear, and will deliver to the said Trustee the policies of insurance. In case of loss, the said Trustee shall allow the insurance money received to be applied by the Company toward the reconstruction or repair of the property destroyed or injured, if the Company shall so request in writing (provided there be at the time of the application of the money no default hereunder known to the said Trustee), and shall upon such request, in the absence of such default, pay said money to the Company for said purpose, on receipt of statements signed and sworn to by the president and secretary of the Company, accompanied by receipted vouchers showing that said property has been replaced or superseded by repaired or new plant, building or other property equal in value to the

amount of money to be paid over on said statements and vouchers. But if the Company shall not within six months from the date of the loss, request in writing to have the insurance money so applied, or in case of any default then existing known to the said Trustee, and not made good by the Company on thirty days' written notice, then the money shall be invested by the said Trustee, in its discretion, in securities which shall form part of the mortgaged or trust property, and shall, together with all interest and accumulations thereon, be subject to the provisions of this mortgage or deed of trust in like manner as the other property hereby conveyed, except that the possession of the securities shall be held by the Trustee; provided, always, that the Trustee shall in any event, if requested in writing by the holders of four-fifths in amount of the outstanding bonds, pay over to the Company the insurance money, or deliver to it the securities purchased therewith, on receipt of statements and vouchers of the description aforesaid. The said Trustee may sell such securities and reinvest the proceeds in its discretion.

ARTICLE XI.

The Company further covenants and agrees that until the bonds hereby secured shall have been fully paid, it will pay, in gold coin of the United States, of, or equal to, the present standard of weight and fineness, or its equivalent, to the said Trustee as and for a sinking fund for the redemption of outstanding bonds issued hereunder, the following sums at the times and in the manner following, to wit:

A sum of money equal to one and one-half per cent of the total par value of bonds of said issue then outstanding on the 15th day of July in each year during the period beginning with the 15th day of July, 1927, and ending with the 15th day of July, 1936.

A sum of money equal to two (2) per cent of the total par value of bonds of said issue then outstanding on the 15th day of July in each year during the period beginning with the 15th day of July, 1937, and ending with the 15th day of July, 1941;

A sum of money equal to three (3) per cent of the total par value of bonds of said issue then outstanding on the 15th day of July in each year during the period beginning with the 15th day of July, 1942, and ending with the 15th day of July, 1945;

A sum of money equal to four (4) per cent of the total par value of bonds of said issue then outstanding on the 15th day of July in each year during the period beginning with the 15th day of July, 1947, and ending with the 15th day of July, 1956.

A sum of money equal to five (5) per cent of the total par value of bonds of said issue then outstanding on the 15th day of July in each year during the period beginning with the 15th day of July, 1957, and ending with the 15th day of July, 1961; and on the 3d day of September, 1962, a further sum of money sufficient for the payment of both principal and interest of all of said bonds then outstanding.

If any of said bonds shall be certified by the Trustee and delivered at any time after the 15th day of July, 1927, then the Company, for the pur-

poses of the said sinking fund, shall at the time of such delivery pay to the Trustee such sum of money as will be equivalent to the aggregate of all sums of money which would theretofore have been paid to said Trustee for the purposes of such sinking fund in respect of said bonds if they had been issued prior to the 15th day of July, 1927.

All money received by the trustee under and pursuant to the provisions of this article, as and for the purposes of such sinking fund shall be used and applied by the Trustee only for the purchase, redemption, or payment of bonds of the issue herein mentioned. None of such bonds shall be purchased by the Trustee under the provisions of this article at a price higher than one hundred and ten per cent (110%) of the par value thereof and accrued interest. Between the 15th day of July, and the 5th day of August, of the year nineteen hundred and twenty-seven (1927), and of each subsequent year, until all of said bonds shall have been paid, the Trustee shall, if the sinking fund moneys due in such year shall have been received by it, advertise daily for at least fifteen days in some newspaper of general circulation published in said city and county of San Francisco, a notice calling for offers for the sale to it of so many of said bonds as may be required for the investment of all moneys then held by it for the purpose of said sinking fund, to be delivered to it by a date to be therein specified, not later, however, than the 10th day of August in such year. The Trustee, if any offer or offers shall be received for the sale to it of bonds of said issue at a price not exceeding that above specified, shall accept the lowest offer or offers so made, and on the next succeeding 3d day of September shall purchase with the moneys then in said sinking fund, so many of said bonds as may have been deposited with it for such purpose on or prior to the 10th day of August of such year, and as may be required to absorb or utilize such moneys. If no such offer shall by the date specified in such notice be received by the Trustee, or if the number of bonds so deposited with the Trustee, shall be insufficient to absorb or utilize all such moneys, then the Trustee shall after the said 10th day of August call for prior payment and redemption, and on the next succeeding 3d day of September redeem, at a price equal to one hundred and ten per cent (110%) of the par value of such bonds and accrued interest, so many of said bonds as shall be required to absorb or utilize the moneys in said sinking fund in excess of the amount necessary to purchase the bonds, if any, so deposited with the Trustee for purchase; provided, however, that the serial number of the bonds to be so called for prior payment shall be determined by the Trustee by lot under the direction of its president, secretary or trust officer, and shall be called and notice of such call and redemption given, in the manner following, to wit:

All calls of bonds for prior payment or redemption made under and pursuant to the provisions of this article shall be by a notice published by the Trustee daily for at least fifteen days prior to the date fixed and stated in such notice for the payment or redemption of such bonds (which date shall always be the 3d day of September of the year in which such notice shall be published), in a daily newspaper, devoted to the publication of general

news, and published in said city and county of San Francisco, state of California. Such notice shall give the serial number of the bonds so called for prior payment or redemption and the place and date of payment, and shall state that on and after the date fixed for payment in such notice, all interest upon the bonds so called will cease. After the date fixed for such redemption in the notice calling bonds for prior payment or redemption in any year, interest upon the bonds so called shall cease, unless payment of the same shall be refused upon their presentation for payment pursuant to such notice.

When any bond shall have been called for prior payment or redemption, the Trustee shall not pay any coupon thereafter maturing appertaining to such bond, unless the bond also shall be presented for redemption.

All bonds purchased by the Trustee or called for prior payment under the provisions of this indenture shall when presented be forthwith canceled by the Trustee, and shall be retained by it until all of said bonds shall have been paid and redeemed, but the Trustee shall exhibit said canceled bonds to any officer of the Company whenever requested so to do by the president of the Company. Upon the payment or redemption of all the bonds of said issue the same shall be delivered to the Company upon demand.

ARTICLE XII.

In addition to the redemption of bonds by the application of sinking fund moneys, as hereinbefore provided, any or all of the bonds of the issue secured hereby may be called for payment or redemption prior to the maturity thereof, and be paid or redeemed by the Company at its option, on the 3d day of March or the 3d day of September in any year, at a price equal to one hundred and ten per cent (110%) of the par value thereof and accrued interest. The amount of bonds par value to be so called for prior payment or redemption shall be determined by resolution of the board of directors of the Company and a copy of such resolution certified by the secretary of the Company shall be delivered to the Trustee prior to the publication of the notice hereinafter provided for. No such call for prior payment or redemption of said bonds, or any of them, shall be made under the provisions of this article unless the Trustee shall at the time have in its hands, applicable to the special purpose of paying and redeeming the bonds so to be called for prior payment, a sum of money sufficient to pay and redeem at a price equal to one hundred and ten per cent (110%) of the par value thereof and accrued interest, so many of said bonds as shall be included in such call. All calls of bonds for prior payment or redemption made under and pursuant to the provisions of this article, shall be by a notice published daily by the Trustee for at least fifteen days prior to the date fixed and stated in such notice for the payment or redemption of such bonds, in a daily newspaper devoted to the publication of general news and published in the city and county of San Francisco, state of California. If all of the outstanding bonds of said issue are so called for prior payment or redemption, such notice shall so state, but if less than all of said outstanding bonds are so called such notice shall give the serial numbers of

the bonds called and in either case shall state the place and date of payment and that after the date fixed for payment in such notice, all interest upon the bonds so called will cease, and after such date all interest upon the bonds so called shall cease, unless payment of the same shall be refused upon their presentation for payment pursuant to such notice. All bonds redeemed hereunder shall be canceled and retained by the Trustee as provided in the preceding article. Whenever under the provisions of this article the Company shall exercise its right to call for prior payment or redemption any number of bonds less than all the bonds of said issue outstanding, the serial numbers of the bonds to be so called shall be determined by the Trustee by lot, under the direction of its president, secretary, or trust officer.

When any bond shall have been called for prior payment or redemption, the Trustee shall not pay any coupon thereafter maturing appertaining to such bond unless the bond also shall be presented for redemption.

Upon presentation to the Trustee, canceled, of all the said bonds and interest coupons, or upon the presentation of a portion thereof, canceled, all of the said bonds having been duly called in for payment, as hereinbefore provided, or having matured, and upon the deposit by the Company with the said Trustee on or before the date of redemption or maturity, as the case may be, of the sum of money in gold coin as aforesaid sufficient to pay at the rate aforesaid all of the said bonds which have been called but have not been presented for payment, and sufficient to pay at par all of said bonds which have matured, and unpaid interest thereon, calculated up to the date of maturity, or in the case of bonds called, up to the date fixed for redemption, the said Trustee shall cancel and discharge this mortgage or deed of trust, and shall execute to the Company, at the expense of the Company, all necessary releases, reassignments and reconveyances of the property included in these presents.

ARTICLE XIII.

The Company covenants and agrees to cause this mortgage or deed of trust at all times to be kept recorded as a mortgage both of real and personal property, in such manner and in such places as may be required by the laws of the state of California, so as to preserve and protect the security of the bondholders and the rights of the said Trustee; and agrees also to execute, acknowledge and deliver to the said Trustee, and properly record and file, a confirmation of this mortgage or deed of trust, or a renewal thereof, or a new mortgage or deed of trust, when, in such manner, and so often as may be necessary to fully protect the Trustee's title or interest, and the security of the bondholders, each such confirmation, renewal or new mortgage or deed of trust to include all property of the Company acquired hereafter and during the life or term of this mortgage or deed of trust, and the conveyance thereof to be made for the same purposes, and on the same trusts as those set forth in this original mortgage or deed of trust. And the Company shall and will, from time to time, during the existence of the trust, make, execute, acknowledge and deliver all such further instruments and conveyances as in the opinion of the Trustee may

be necessary or proper to facilitate the execution of said trust, or to further secure said bonds, all of which additional instruments and conveyances the Company agrees to keep properly filed and recorded.

The further conveyances herein provided for, if made, shall never be construed as a novation or as an alteration of or amendment to this mortgage or deed of trust, but as a part of it pursuant to its terms, and nothing herein contained shall ever be construed as authorizing or permitting the execution of any conveyances which shall or might have the effect of impairing the lien or security of this mortgage or deed of trust as of date hereof.

ARTICLE XIV.

It is hereby further covenanted and agreed that the said Trustee, or any successor or successors, may, and upon request in writing of the holders of three-fourths ($\frac{3}{4}$) of the bonds hereby secured and then outstanding, shall, at any time, resign the trust hereby created by written notice delivered to the president, vice-president or secretary, of the Company, thirty (30) days before the resignation takes effect and that, in case of such resignation, or of the removal or incapacity of the said Trustee, by reason of insolvency or other cause, the board of directors of the Company shall have the right to nominate and appoint a successor or successors to the said office of Trustee, provided there has been no default on the part of the Company in the payment of the principal or interest due in respect of any of the bonds secured thereby; but any vacancy of more than sixty (60) days' standing may be filled by any court having jurisdiction, on the application of the outgoing Trustee or any bondholder or any person interested; any trustee appointed by the board of directors of the Company shall be a trust company in good standing. Upon the appointment of any such successor or successors of the Trustee by either method above mentioned all the mortgaged or trust property shall immediately and without conveyance vest in the new trustee for the purposes of the trust hereby created; but the outgoing trustee or trustees shall, nevertheless, at the request of the new trustee or the Company, but at the expense of the Company, and upon the payment to it of such amounts as may be due to it, hereunder, execute, acknowledge, and deliver to the new trustee such deeds of conveyance or other instruments in writing as may be necessary to vest in or confirm to the new trustee the mortgaged or trust property.

ARTICLE XV.

The Company further covenants and agrees that all certificates representing shares hereafter acquired by it, of the capital stock of any corporation, shall forthwith and contemporaneously with the acquisition of the same be delivered to the Trustee duly endorsed in blank and shall be held by said Trustee, subject in all respects to the lien and operation of this mortgage or deed of trust as security hereunder for the payment of the principal of and interest on the bonds secured hereby.

The Company further covenants and agrees to pay any and all assessments of every kind which may be levied against any shares of stock

hereby mortgaged or pledged, and agrees further that the said Trustee may cause each and all of such shares of stock hereby mortgaged or pledged to be transferred into the name of the Trustee as pledgee hereunder, or into such other name or names representing it, as the Trustee may elect.

The Trustee shall be under no obligation to transfer the said shares into its name as Trustee or otherwise, or to see that any entry is made on the books of any company whose shares shall at any time constitute part of the property hereby mortgaged. The Trustee shall from time to time cause to be transferred to such persons as may be designated by resolution of the board of directors of the Company, a sufficient number of the shares of stock pledged hereunder to qualify such persons to act as directors of any Company shares of stock in which may at any time be so pledged, not exceeding, however, one hundred shares to each such person, but the certificates representing such shares of stock shall be immediately endorsed in blank and delivered to the Trustee, and shall be held by it upon the trusts herein expressed and declared. Unless default shall be made in the performance of the covenants or conditions of this indenture, or some of them, and such default shall continue beyond the period of grace (if any) allowed therefor herein, the Company shall have the right to vote upon all shares of stock that shall become subject to this indenture, and the Trustee, on demand of the Company, from time to time shall execute and deliver to it, or to such person or persons as shall be designated by resolution of its board of directors, such proxies or powers of attorney as may be necessary to enable the Company, or the person or persons so designated, to vote all shares of stock pledged or to be pledged hereunder (and which shall then stand in the name of the Trustee as pledgee) at all meetings of the stockholders of the corporation issuing the same. Such proxies or powers of attorney shall set forth and state that the same shall not authorize any such shares to be voted for the purpose of doing or permitting to be done any of the following mentioned acts or things, to wit:

To create or increase the bonded indebtedness of any corporation a majority of whose shares of stock shall be pledged hereunder, or to increase the capital stock of any such corporation, or to approve, assent to or ratify the sale, conveyance or leasing to any person or to any corporation other than the Company, of the property of any corporation, a majority of whose shares of stock shall be so pledged, except as provided in Article XVI.

In case default shall be made in the performance of any of the covenants or conditions of this indenture, and such default shall continue beyond the period of grace (if any) allowed therefor herein, then during the continuance of such default, in addition to the other remedies herein provided, the Trustee shall revoke any proxies or powers of attorney and vote, or cause such person as it may select to vote, all such shares of stock; but after any such default shall have been made good the right of the Company to vote upon any such shares and the obligation of the Trustee to execute the proxies and powers of attorney shall revive, and shall continue as though

no such default had taken place; provided, however, that the Trustee shall not have authority to vote upon any such shares of stock or to exercise any rights as owner or holder of any such shares, except in case of and after a default shall have been made in the performance of the covenants or conditions of this indenture and such default shall have continued beyond the period of grace (if any) allowed therefor herein.

Any such proxy or power of attorney executed by the Trustee shall be spread in full upon the minutes of every stockholders' meeting at which such proxy may be used.

ARTICLE XVI.

The Company further covenants and agrees that the said Trustee shall collect and receive all dividends on any shares of stock deposited, mortgaged and pledged hereunder. So long as there shall be no default in the payment of the principal of or interest on the bonds hereby secured all dividends upon any shares of stock hereby deposited, pledged or mortgaged shall, as the same are collected by the said Trustee, be paid over to the Company or upon its order, for the use of the Company. In the event of any such default and during the continuance of the same, all such moneys collected by the said Trustee as dividends may be applied to the payment of the interest upon the bonds hereby secured as it accrues, or to make or reimburse any expenditure of the said Trustee under the provisions of this mortgage or deed of trust. The Company will not, except with the consent of said Trustee, sanction or permit any corporation of whose capital stock the greater part shall at any time be pledged or deposited hereunder or subject to the lien of this mortgage or deed of trust, to grant, bargain, sell or convey its property or any part thereof to any person other than the Company, except upon condition that the proceeds derived from the sale of said property shall be equal in amount or value to the value of the property sold, as appraised by some disinterested person, selected by the Trustee with reasonable care, for the purpose of investigating the question, and certified by him in writing to the Trustee, and that the proceeds of such sale shall either be reinvested by said corporation in property, which shall become subject to the lien hereof as a first mortgage the value of which shall in like manner be appraised and ascertained, or unless the proceeds derived from the sale of said property shall be paid into the sinking fund herein provided for, and become a part thereof in addition to the annual payments to be made thereto by the Company. And the Trustee (the Company not being in default known to the Trustee) shall, whenever requested by an attested resolution of the directors of the Company, consent to such sale or conveyance and do any and all things proper to facilitate the same. Except as aforesaid and except with the consent of the Trustee, the Company will not sanction or permit any corporation of whose capital stock the greater part shall be pledged hereunder, to sell or convey its property or any part thereof except to said Company.

The Company will not sanction or permit the issue of additional shares of the capital stock of any corporation of whose capital stock the greater part shall at any time be pledged or deposited hereunder or be subject to

the lien of this mortgage or deed of trust, unless effective provision be simultaneously made that such portion of the increased capital stock be forthwith pledged and deposited with the said Trustee hereunder and made subject to all the trusts of this mortgage or deed of trust, so that of the total capital stock of such corporation at least as great a proportion shall be pledged and deposited with the said Trustee hereunder, subject to the lien hereof, as was pledged or deposited hereunder prior to such increase. Nor will it sanction or permit any such corporation to issue any bonds or to create any mortgage or other lien upon its property or premises, unless effective provision be simultaneously made, which shall assure the application of said bonds or the proceeds thereof, to one or more of the following purposes: To improvements or additions to or betterments upon property owned by the corporation issuing or to issue such bonds; to the purchase, construction or equipment by the corporation issuing or to issue such bonds, of additional gas or electric plants, or the purchase of lands, rights of way or other property required for use in the conduct of the business of such corporation; nor will it suffer any judgment against any such corporation to remain unsatisfied for more than thirty (30) days unless execution upon such judgment has been stayed by bond or otherwise. The Company further agrees to maintain the corporate existence of any such corporation.

ARTICLE XVII.

The term Trustee as employed in this instrument shall be taken to mean the Trustee hereunder for the time being, whether the party of the second part or its successor or successors in the said trust.

ARTICLE XVIII.

The Trustee shall keep at its office books for the registration of any of said bonds which shall be presented to it for that purpose. Such books shall at all reasonable times be subject to inspection by the holder of any registered bond of the issue herein mentioned. The Trustee will, whenever requested so to do by the owner of any of said bonds, register or discharge the same from registry, in accordance with the provisions in said bonds contained. Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this mortgage or deed of trust or shall be entitled to any lien or benefit hereunder. No such bond or any coupon thereunto attached shall be obligatory or valid for any purpose until and unless such certificate shall be duly endorsed on such bond. Every such certificate of the Trustee upon any bond executed by the Company shall be conclusive evidence and the only evidence that the bond so certified is entitled to the benefit of the trust hereby created.

ARTICLE XIX.

All bonds to be issued hereunder and secured hereby, together with the Trustee's certificate and the registration memorandum to be endorsed thereon, and their interest coupons, shall be substantially of the tenor and purport above recited. From time to time bonds of said series, as required

and as hereinafter provided, shall be executed by the Company, by its president and secretary for the time being, and shall be delivered to the Trustee for certification, and thereupon the Trustee shall certify and deliver the same as provided in Article XX of this indenture, and not otherwise. Each and all of said bonds having been executed, issued and certified as aforesaid, shall be valid and binding upon the Company whenever the same shall be issued, notwithstanding the officers, by whom the said bonds shall have been signed and sealed on behalf of the Company, shall then have ceased to be such officers. In case any bond of said series, or any coupon thereof, shall become mutilated or destroyed, the Company in its discretion may issue, and thereupon the Trustee in its discretion shall certify and deliver, a new bond or coupon of like tenor and date, bearing the same serial number as the one mutilated or destroyed, in exchange for and upon cancellation of the mutilated bond or coupon, or in lieu of and in substitution for the same if destroyed. In case of destruction the applicant for a substituted bond or coupon shall furnish to the Company and to the Trustee satisfactory evidence of the destruction of such bond or coupon, and shall also furnish indemnity satisfactory to both of them in their discretion. Coupons upon all of the bonds which shall be issued under the provisions of this deed of trust shall be authenticated by the engraved signature of the present secretary of the Company, even though he shall have ceased to be such secretary prior to the execution, certification and delivery of the bonds to which said coupons shall be attached. The entire amount of all bonds to be issued under and by virtue of this deed of trust shall not at any time exceed the principal sum of one million five hundred thousand dollars (\$1,500,000) par value. The Trustee, before certifying and delivering any of said bonds, shall cut from such bond and cancel all matured interest coupons annexed thereto.

ARTICLE XX.

Bonds of the issue herein mentioned shall be certified and delivered by the Trustee in accordance with the provisions of this article and not otherwise.

The Trustee shall, upon the execution and delivery of this indenture, certify and deliver to the Company bonds of said issue of the aggregate par value of one million and fifty thousand dollars (\$1,050,000) represented by bonds numbers one (1) to one thousand and fifty (1050) both numbers included and a receipt executed in the corporate name of the Company by its president and secretary, and under the corporate seal of the Company, acknowledging receipt of said one thousand and fifty (1050) bonds shall be conclusive evidence of the delivery of said bonds to the Company under the provisions hereof.

The Company covenants and agrees that immediately upon receiving said one thousand and fifty (1050) bonds it will assign and deliver the same to Stockton Gas and Electric Company in payment or part payment for the conveyance to the Company, by said Stockton Gas and Electric Company, of all the property of said Stockton Gas and Electric Company, and that it will require said last named company, as a condition to the

delivery of such bonds to it, to execute and deliver to the Company an agreement by the terms of which said Stockton Gas and Electric Company shall covenant and agree to apply three hundred and fifty of said bonds, to wit: bonds numbers 701 to 1050 inclusive, or the proceeds thereof, as far as may be necessary, solely to the payment and retirement of all the outstanding bonds of said Stockton Gas and Electric Company.

The remainder of said bonds; to wit: bonds numbers one thousand and fifty-one (1051) to one thousand five hundred (1500) inclusive shall be certified and delivered to the Company by the Trustee from time to time in such amounts as shall equal at their par value, eighty (80) per cent of the sums of money from time to time actually disbursed by the Company for any of the following purposes:

1. For improvements or additions to or betterments upon any property owned by it and subject to the lien hereof or for extensions of its gas and electric systems.

2. For the acquisition, purchase, construction or equipment of additional gas or electric plants or the purchase of lands, rights of way or other property required for use in the conduct of its business.

3. The purchase of not less than a majority of the subscribed or issued shares of the capital stock of a corporation or corporations owning one or more plants for the generation and distribution of gas or electricity.

Provided, however, that all certificates representing shares of stock so acquired, shall be immediately delivered to the Trustee, duly endorsed in blank, to be by it held pursuant to and under the terms of this indenture and that all other property so acquired shall contemporaneously with the delivery to the Company by the Trustee of bonds equal at par value to the amount paid for such property by the Company, be subjected to the lien of this indenture, subject only to such liens as shall exist thereon at the time of the acquisition of the same by the Company.

None of said bonds numbers one thousand and fifty-one (1051) to fifteen hundred (1500) inclusive, shall ever be certified and delivered by the Trustee for disbursements of the Company in making repairs to or renewals of any portion of its plant which may become worn out, in bad repair, or obsolete.

The Trustee shall certify and deliver bonds of said serial numbers ten hundred and fifty-one (1051) to fifteen hundred (1500) inclusive upon the delivery to it of resolutions from time to time adopted by the board of directors of the Company showing that the conditions exist, under the provisions hereof which entitle it to receive bonds as herein provided. Said resolutions shall set forth the particulars showing the existence of such conditions, and shall show the aggregate amount of the actual disbursements of the Company in respect of which it may be entitled to receive bonds, and for what purposes such disbursements were made and the period covered thereby, and shall set forth that no bonds of the issue hereby secured have been certified or delivered by the Trustee on account of the disbursements or any thereof in said resolution referred to. The delivery to the Trustee of a copy of such resolution, certified to be correct

by the secretary of the Company, with the corporate seal of the Company affixed thereto, shall be full and complete authority to the Trustee to deliver bonds of said issue to the Company, in accordance with the provisions of this article. The Trustee shall not incur any liability or responsibility whatever by certifying and delivering said bonds.

ARTICLE XXI.

The Company further hereby covenants and agrees to cause this mortgage or deed of trust to be duly and properly filed for record in the office of the county recorder of said county of San Joaquin, state of California, and in the office of the county recorder of the city and county of San Francisco, state of California, with all convenient speed, and the said Trustee shall have no responsibility as to the execution, acknowledgment, or recording of this mortgage or deed of trust as a deed of trust or mortgage or conveyance of real or personal property, or as to any other act which may be suitable or proper to be done for the continuing of the lien of this mortgage or deed of trust, or for giving notice of the existence of the lien thereof.

ARTICLE XXII.

It is further understood and agreed as follows:

1. That the recitals herein contained are made on behalf of the Company, and the said Trustee assumes no responsibility as to the correctness of any statement herein contained, nor as to the validity of this mortgage or deed of trust, nor as to the amount or extent of the security afforded by the property conveyed by this mortgage or deed of trust; and the said Trustee shall not be in any way liable for the consequences of any breach on the part of the Company of any of the covenants herein contained, or for any other act or thing hereunder except for its own negligence.

2. That the said Trustee shall be under no obligation to recognize any person, firm, or corporation as holder or holders, owner or owners, of one or more of the bonds secured hereby, or to do or refrain from doing any act pursuant to the request or demand of any person or firm or corporation professing or claiming to be such holder or owner, until such holder or holders shall produce the bond or bonds claimed to be so held or owned and deposit the same with the said Trustee and shall indemnify and save harmless the said Trustee to its full satisfaction of and from any and all costs or expenses, outlays, and counsel fees, or other reasonable disbursements for which it may become liable or responsible in proceeding to carry out such request or demand.

3. That should any suit or proceeding be brought against the said Trustee by reason of any matter or thing connected with the trust hereby created, or by reason of its being such Trustee, it shall be under no obligation to enter an appearance by counsel, or in any way appear in or defend such suit or other proceeding unless indemnified to its full satisfaction for so doing, but it may nevertheless appear and defend such suit or proceeding without indemnity if it elect so to do, and in such case it shall be compensated therefor from the trust funds in its hands, or, if there

be no such funds in its hands, the said Trustee shall be paid and compensated by the Company.

4. That the Trustee shall be entitled to be reimbursed for all proper outlays of every sort and nature by it made and incurred in the execution, acceptance, and discharge of its trust hereunder, and to receive a reasonable and proper compensation for any duties that it may at any time perform in discharge of the same, and for any damage sustained or incurred by the said Trustee, by reason or on account of any damage to any of its officers, attorneys, agents, or servants selected and retained with reasonable care in the performance of its trust hereunder, and all such outlays, fees and commissions, compensations and disbursements shall constitute and continue a lien on the mortgaged or trust property and premises prior to any other lien hereunder.

5. That it shall not be part of the duty of the Trustee to effect insurance against fire or other damage to any portion of the mortgaged or trust property, or to renew any policies of insurance, or to pay any taxes or assessments on any of said property.

6. That if and in case at any time it shall be necessary or proper for the said Trustee to make any investigation respecting any facts preparatory to taking or not taking any action, or doing or not doing any thing under this mortgage or deed of trust as such Trustee, the certificate of the Company under its corporate seal, executed in the name and on behalf of the Company by its president or vice-president and secretary, shall be sufficient evidence of such fact or facts to protect the said Trustee in any action that it may take by reason of its supposed investigations of such fact or facts.

The said Trustee hereby accepts the trust in the said mortgage or deed of trust declared and provided and agrees to perform the same upon the terms and conditions hereinbefore set forth.

In Witness Whereof, The parties hereto have hereunto and to a duplicate hereof caused their respective corporate names to be subscribed and their respective corporate seals to be affixed by their respective officers thereunto duly authorized the day and year first above written.

(Seal.)

STOCKTON GAS AND ELECTRIC COPORATION.

By A. H. WINN,

President.

By R. T. HOOPER,

Secretary.

MERCANTILE TRUST COMPANY OF SAN FRANCISCO.

By H. T. SCOTT,

Vice-President.

By JOHN D. MCKEE,

Secretary.

State of California, City and County of San Francisco, ss.

On this 3rd day of September in the year one thousand nine hundred and twenty-seven, before me, Frank L. Owen, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared A. H. Winn, known to me to be the president, and R. T. Hooper, known to me to be the secretary of Stockton Gas and Electric Corporation, one of the corporations that executed the within and annexed instrument, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the said city and county of San Francisco the day and year in this certificate first above written.

(Seal.)

FRANK L. OWEN,
Notary Public in and for the City and County
of San Francisco, State of California.

State of California, City and County of San Francisco, ss.

On this 3rd day of September, in the year of our Lord one thousand nine hundred and twenty-seven, before me, Frank L. Owen, a notary public in and for said city and county and state, residing therein, duly commissioned and sworn, personally appeared H. T. Scott and John D. McKee, known to me to be the vice-president and secretary respectively of the Mercantile Trust Company of San Francisco, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the said corporation therein named, and they acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county and state aforesaid the day and year in this certificate first above written.

(Seal.)

FRANK L. OWEN,
Notary Public in and for the City and County
of San Francisco, State of California.

State of California, City and County of San Francisco, ss.

A. H. Winn, being first duly sworn, deposes and says: That he is the president of Stockton Gas and Electric Corporation, a corporation organized and existing under and by virtue of the laws of the state of California; that the annexed and preceding mortgage or deed of trust is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

This affidavit is made so as to comply with the form of mortgage which is required in cases of the mortgage of personal property in the state of California.

A. H. WINN.

Subscribed and sworn to before me this 3rd day of September, 1927.

(Seal.)

FRANK L. OWEN,
Notary Public in and for the City and County
of San Francisco, State of California.

State of California, City and County of San Francisco, ss.

R. T. Hooper, being first duly sworn, deposes and says: That he is the secretary of Stockton Gas and Electric Corporation, a corporation organized and existing under and by virtue of the laws of the state of California; that the annexed and preceding mortgage or deed of trust is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

This affidavit is made so as to comply with the form of mortgage which is required in cases of the mortgage of personal property in the state of California.

R. T. HOOPER.

Subscribed and sworn to before me this 3rd day of September, 1927.

(Seal.)

FRANK L. OWEN,
Notary Public in and for the City and County
of San Francisco, State of California.

State of California, City and County of San Francisco, ss.

H. T. Scott, being first duly sworn, deposes and says: That he is the vice-president of Mercantile Trust Company of San Francisco, a corporation organized and existing under and by virtue of the laws of the state of California; that the annexed and preceding mortgage or deed of trust is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

This affidavit is made so as to comply with the form of mortgage which is required in cases of the mortgage of personal property in the state of California.

H. T. SCOTT.

Subscribed and sworn to before me this 3rd day of September, 1927.

(Seal.)

FRANK L. OWEN,
Notary Public in and for the City and County
of San Francisco, State of California.

State of California, City and County of San Francisco, ss.

John D. McKee, being first duly sworn, deposes and says: That he is the secretary of Mercantile Trust Company of San Francisco, a corporation organized and existing under and by virtue of the laws of the state of California; that the annexed and preceding mortgage or deed of trust is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

This affidavit is made so as to comply with the form of mortgage which is required in cases of the mortgage of personal property in the state of California.

JOHN D. MCKEE.

Subscribed and sworn to before me this 3rd day of September, 1927.

(Seal.)

FRANK L. OWEN,
Notary Public in and for the City and County
of San Francisco, State of California.

§ 900. Collateral Trust Agreement.

This Indenture, Made and entered into as of the first day of August, A. D. 1927, by and between the Anglo-Canadian Construction Corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and duly qualified to transact business and exercise its corporate powers in the State of Utah (hereinafter for convenience termed the Company), party of the first part, and, a corporation duly organized and existing under and by virtue of the laws of the state of (hereinafter for convenience termed the Trustee), party of the second part, Witnesseth:

That, Whereas, The Company is duly authorized to borrow money from time to time for its corporate purposes, and to issue therefor its notes or other obligations, secured by pledge of the Company's bonds, as hereinafter provided, and, for its proper corporate purposes, the Company has determined to make and issue its coupon notes to the aggregate principal amount of one hundred thousand dollars (\$100,000), payable in gold coin of the United States of America, of the present standard of weight and fineness, such notes to be in the denominations of one thousand dollars (\$1000), five hundred dollars (\$500) and one hundred dollars (\$100) each (each of which said notes is to bear a distinctive number or designation), payable on the first day of August, A. D. 1932, and bearing interest at the rate of seven per centum per annum from the first day of August, A. D. 1927, payable semi-annually, in like gold coin, on the first days of February and August, in each year; and

Whereas, The Company, under and pursuant to the power and authority aforesaid, has determined to secure the prompt payment of the principal and interest of all the said notes by executing and delivering to the Trustee a collateral trust agreement, in the terms of this indenture, pledging the hereinafter described stocks; and

Whereas, The issuance of said notes, and the execution and delivery of this indenture, have been authorized by the written consent of a majority of the holders of the issued and outstanding capital stock of the company and by a resolution adopted by the board of directors of the Company, and at a meeting thereof duly and regularly called and held, and a collateral trust agreement, in the form of this indenture, was submitted to and approved by said board of directors at their said meetings, and the president or vice-president, and secretary or assistant secretary, of the Company were duly authorized, at said meeting, on behalf of the Company, as its act and deed, and under its corporate seal, to execute, acknowledge and deliver the same to the Trustee; and

Whereas, The forms of said coupon notes and of the interest coupons to be attached thereto, and of the certificate to be signed by the Trustee for the authentication thereof, were, at said meeting, submitted to and approved by said resolution of the board of directors and by the written consent of a majority of the stockholders of the Company, and are as follows, to wit:

(Form of Note.)

No.....

\$.....

UNITED STATES OF AMERICA.

State of Delaware.

Anglo-Canadian Construction Corporation.

Five Year Six Per Cent Collateral Trust Gold Note.

Anglo-Canadian Construction Corporation (hereinafter called the Company), for value received, hereby promises to pay, on the first day of August, 1932 (unless this note be sooner redeemed as hereinafter provided), at the office of (hereinafter called the Trustee), in the City of Chicago, Illinois, to bearer, or, if registered, to the registered holder of this note, Dollars (\$.....), in gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from August 1, 1927, at the rate of six per centum per annum, such interest to be payable at the office of said Trustee, in like gold coin, semi-annually, on the first days of February and August in each year, upon presentation and surrender, as they severally mature, of the coupons for such interest hereto annexed. Both the principal and interest of this note shall be paid without deduction for any taxes, assessments or other governmental charges (exclusive of any such deduction authorized or required by the Federal Government in excess of four per centum of any such payment), which the Company, its successors or assigns, may be required to pay thereon, or authorized to deduct or retain therefrom, under any present or future law or requirement of the United States, or of any state, county, city, village, township or other municipality or governmental subdivision, the Company hereby agreeing to pay all such taxes, assessments and charges.

This note is one of a duly authorized issue of coupon notes of the Company, the aggregate amount whereof is limited to the principal sum of One Hundred Thousand Dollars (\$100,000); all of which notes have been issued, or are to be issued, under and in pursuance of, and are all equally secured by, and are subject to, a Trust Indenture, bearing even date with this note, duly executed by the Company to, as Trustee, under which Indenture certain corporate stocks belonging to the Company are deposited with said Trustee, and hereby reference is made to said Indenture for a description of the pledged property, the nature and extent of the security thereby created and the rights of the holders of the bonds issued thereunder. In case of default in the payment of any installment of interest due on this note, and the continuance thereof for a period of sixty days, the principal of this note may be declared due and payable prior to its maturity, in the manner and upon the conditions expressed in said Indenture, and may otherwise be declared due and payable prior to maturity, upon the occurrence and continuance of default as in said Indenture provided. This note is subject to call and redemption before maturity on any interest day, at 115 per centum of the par value thereof, and accrued interest, in the manner and upon the terms set forth in said Indenture. The bearer, or, if registered, the registered holder of this note, shall be entitled if he so elect to surrender it together with any unmatured interest coupons on any regular interest date up to maturity, and shall be entitled to receive therefor full paid stock of the Company equal in face value to fifty per cent of the par value of this note. No recourse shall be had for the payment of the principal or interest of this note against any incorporator, stockholder, officer or director of the Company, past, present or future, either directly or through the Company, by virtue of any statute or constitution, or by the enforcement of any assessment or penalty, or otherwise howsoever, any and all liability of incorporators, stockholders, directors and officers of the Company being hereby waived and released by each successive holder of this note.

This note shall pass by delivery, unless registered in the owner's name on the books of the Company, at the office of the Trustee, in the city of Chicago, Illinois, such registration being noted on the note by said Trustee, after which no transfer shall be valid unless made on said books, in the manner prescribed in said Indenture, and similarly noted on the note, but the same may be discharged from

registry by being transferred in like manner to bearer, after which transferability by delivery shall be restored, and again from time to time it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon by delivery merely, and payment to the bearer thereof shall discharge the Company in respect of the interest therein mentioned, whether, or not the note shall have been registered. Neither this note, nor any of the coupons for interest thereon, shall become or be valid until the note shall have been authenticated by the certificate endorsed hereon, duly signed by the Trustee, under said Indenture, or its successor in said trust.

IN WITNESS WHEREOF, the Company has caused these presents to be signed by its President, or a Vice-President, and its corporate seal to be hereunto affixed, and to be attested by its Secretary, or an Assistant Secretary, and the coupons for such interest, bearing the facsimile signature of its Treasurer, to be attached hereto, as of the first day of August, A. D. 1927.

ANGLO-CANADIAN CONSTRUCTION CORPORATION.

Attest:

By.....

President.

.....

Secretary.

(Form of Interest Coupon.)

\$.....

On the first day of Anglo-Canadian Construction Corporation will pay the bearer hereof, at the office of the Trust Company, in the City of Chicago, Illinois, Dollars (\$.....), in gold coin of the United States of America, being semiannual interest then due upon its Five Year Six Per Cent Collateral Trust Gold Note, Number, subject to all of the terms of said note, and of the Indenture therein mentioned.

.....

Treasurer.

(Form of Trustee's Certificate.)

It is hereby certified that this note is one of the series of notes mentioned and described in the Indenture within referred to.

THE TRUST COMPANY,
Trustee.

By.....

And Whereas, In pursuance of said resolution of the board of directors of the Company, and in pursuance of all and every legal power and authority in it vested, the Company proposes to make, execute and deliver notes hereby secured, as hereinabove and hereinafter more particularly set forth:

Now, Therefore, This Indenture Witnesseth, That to secure the payment of the principal and interest of such notes as may at any time be issued and outstanding under this indenture, according to their tenor and effect, and to declare the terms and condition upon which said notes are to be issued, the Company, party of the first part, and the pledgor, party of the third part, in consideration of the premises, and of the purchase and acceptance of such notes by the holders thereof, and of the sum of one dollar, lawful money of the United States of America, to each of them duly paid by the Trustee, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have executed and delivered these presents, and have sold, assigned, transferred, pledged, set over and delivered, and by these presents do sell, assign, transfer, pledge,

set over and deliver, unto the party of the second part, and to its successor or successors in the trust hereby created, all and singular the following described property (hereinafter sometimes called the "pledged securities"), to wit:

1. Seven hundred and fifty thousand dollars (\$750,000), par value, of the first mortgage gold bonds of the Company, issued and outstanding under its mortgage or deed of trust, of date April 1, 1933, to the Continental and Commercial Trust and Savings Bank, as trustee (hereinafter called the "first mortgage"), the total amount of bonds outstanding under the first mortgage at the date hereof being \$. in principal amount (part of a total authorized issue of ten million dollars (\$10,000,000)). The bonds from time to time outstanding under the first mortgage are hereinafter sometimes called the "first mortgage bonds" and such of said outstanding bonds as are not for the time being pledged with the Trustee hereunder are hereinafter sometimes called the "non-deposited first mortgage bonds."

2. All other of said first mortgage bonds which may hereafter be deposited with the Trustee under the provisions of Section 4 of Article 1 of this indenture.

3. Also all bonds, shares of stock and other property, real, personal and mixed, of every name and nature, which may from time to time hereafter by delivery, or by writing of any kind, for the purpose hereof, be pledged, assigned or transferred by the Company, or with its written consent by anyone in its behalf, to the Trustee; the Trustee being hereby authorized to receive any property, at any and all times, as and for additional security for the payment of the notes issued, or to be issued, hereunder, and to hold and apply any and all such property, according to the terms hereof:

To have and to hold the pledged securities hereby assigned and pledged, or intended to be hereby assigned and pledged, or hereafter to be assigned and pledged, unto the Trustee, and to its successor or successors in the trust hereby created, forever; but in trust, nevertheless, for the equal and proportionate benefit and security of any and all notes issued and to be issued hereunder, without regard to the time of the actual issue or negotiation of said notes; so that each note shall have, under and by virtue of this indenture, the same right, lien and privilege as every other note issued, and to be issued, hereunder, and as though all said notes had been executed, delivered and negotiated simultaneously with the execution and delivery of this indenture.

And it is hereby covenanted and agreed that all said notes hereby secured shall be issued, certified and delivered, received and negotiated, and that the pledged securities are hereby assigned, transferred and delivered by the Company to the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth;

And it is covenanted and agreed as follows:

ARTICLE I.

Section 1. All notes to be secured hereby shall be signed by the president or one of the vice-presidents of the Company, and the corporate seal

of the Company shall be thereto affixed and attested by the secretary or an assistant secretary of the Company. In case the officers, who shall sign and seal any of said notes as aforesaid, shall cease to be such officers of the Company, after delivery of such notes to the Trustee, but before the notes so signed and sealed shall have been actually authenticated and redelivered by the Trustee, such notes may, nevertheless, upon the request of the Company, be issued, authenticated and delivered as though the persons who signed and sealed such notes had not ceased to be officers of the Company.

Of the notes to be issued hereunder those in the denomination of one thousand dollars (\$1,000) each shall be numbered from M1 upwards, those in the denomination of five hundred dollars (\$500) each shall be numbered from D1 upwards, and those in the denomination of one hundred dollars (\$100) each shall be numbered from C1 upwards. Notes which may be certified and delivered to or upon the order of the Company under any of the following sections of this article shall be in such denominations as may be requested by the Company, or by the person to whom, by any order of the Company, the same are deliverable.

In case the holder of any note or notes previously issued hereunder shall desire to exchange the same for notes of any other denomination above described, such holder shall have the right so to do upon payment to the Company of a reasonable charge therefor; and upon cancellation and surrender of said previously issued notes to the Trustee, the Company shall execute, and the Trustee shall authenticate and deliver, new notes for a like principal amount, and said new notes so issued, authenticated and delivered shall stand upon an equality with all other notes issued and to be issued hereunder.

The coupons to be attached to said notes shall be authenticated by the facsimile signature of the present treasurer, or any future treasurer, of the Company, it being intended that the Company may adopt and use for that purpose the facsimile signature of any such treasurer, notwithstanding that he may have ceased to be the treasurer of the Company at the time when said notes shall be actually authenticated and delivered. All of said notes, when executed by the Company, shall be delivered to the Trustee to be authenticated by it, and the Trustee shall authenticate and deliver the same only as provided in this article.

Only such notes as shall bear thereon the certificate of the Trustee, duly signed, shall be secured by this indenture or entitled to any lien or benefit hereunder; and such certificate of the Trustee, upon any such note executed on behalf of the Company, shall be conclusive evidence that the note so authenticated has been duly issued hereunder, and is entitled to the benefits of the trust hereby created. The aggregate amount of all the notes which may be issued and outstanding under this indenture shall not, at any time, exceed one hundred thousand dollars (\$100,000).

Sec. 2. Pending the preparation of the permanent notes to be issued under and secured by this indenture, the Company may execute and deliver a typewritten or printed note or notes, without coupons, bearing interest

at six per centum per annum from August 1, 1927, substantially of the tenor of the notes hereabove described, in amounts of one hundred dollars (\$100), or any multiple of one hundred dollars (\$100). Any such temporary note or notes shall be authenticated by the Trustee in the same manner as the notes hereinabove described, and such authentication shall be conclusive evidence that the temporary note or notes so authenticated have been duly issued under this indenture, and that the holder or holders thereof are entitled to the benefits of this trust. Such temporary note or notes issued and authenticated as aforesaid shall be exchangeable, without expense to the holder, for permanent notes to be issued under and secured by this indenture, and upon any such exchange said temporary note or notes shall be forthwith canceled by the Trustee and delivered to the Company for destruction. Until so exchanged said temporary note or notes shall be in all respects entitled to the lien and security of this indenture as notes issued and authenticated hereunder. Without unnecessary delay, the Company will execute and will furnish such permanent notes to be exchanged for said temporary note or notes upon surrender of such temporary note or notes to the Trustee.

Sec. 3. Said notes to the principal amount of one hundred thousand dollars (\$100,000) shall forthwith be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall forthwith authenticate and deliver the same upon the order of the Company, signed by its president or vice-president and its secretary or assistant secretary, under its corporate seal, without any obligation on the part of the Trustee to see to the use or application of said notes or their proceeds.

The notes hereby secured, mentioned and referred to in this section (4) of this article shall be certified and delivered only upon the Company filing with the Trustee a certified copy of a resolution of the board of directors of the Company directing the certification and specifying the denominations thereof, and naming an officer of the Company to whom they are to be delivered.

Sec. 4. The Company covenants that it will not issue, exchange, sell or dispose of any notes hereunder in any manner other than in accordance with the provisions of this indenture, and the covenants and agreements in that behalf herein contained.

Sec. 5. In case any note issued hereunder, with the coupons thereto pertaining, shall become mutilated, lost or destroyed, the Company may, in its discretion, issue, and the Trustee shall thereupon certify, a new note of like tenor and date, including coupons, and bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated note and its coupons, or in lieu of and substitution for the note and its coupons so lost or destroyed, upon receipt of satisfactory evidence of the loss or destruction of such note and its coupons, and upon receipt also of satisfactory indemnity. The Trustee shall incur no liability for anything done by it under this section.

Sec. 6. Nothing in this indenture expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other

than the parties hereto, and the holders of the notes issued under and secured by this indenture, any right, remedy or claim, legal or equitable, under or by reason of this indenture, or any covenant, condition or stipulation hereof; this indenture, and all its covenants, conditions and stipulations, being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders from time to time of the notes hereby secured.

ARTICLE II.

Section 1. The Company covenants that it will duly and punctually pay the principal and interest of every note issued hereunder and secured hereby, at the dates and place and in the manner specified in such note, or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any taxes, assessments, or other governmental charges (exclusive of any such deduction authorized or required by the federal government in excess of four per centum of any such payment) imposed by the United States, or by any state, territory, county, city, village, township or other municipality or governmental subdivision, and which the Company may be required to pay thereon, or authorized to deduct or retain therefrom, under or by reason of any present or future law or requirement, the Company hereby agreeing to pay all such taxes, assessments and charges. The interest on the notes shall be payable only upon presentation of the several coupons for such interest as they respectively mature, and, when paid, such coupons shall forthwith be canceled.

Sec. 2. The Company, at the office of the Trustee, in the city of Chicago, will keep a register or registers for the registration and transfer of notes issued hereunder, in which the Trustee will register, subject to such reasonable regulations as it may prescribe, any notes issued hereunder and secured hereby.

Upon presentation to the Trustee at its office in Chicago, Illinois, of any such registered note, accompanied by the delivery of a written instrument of transfer in the form approved by the Trustee, executed by the registered holder, and the payment of the Trustee's reasonable charge, such note may be transferred upon such register by the registered holder, in person or by attorney, and such transfer shall be noted by the Trustee upon the register and upon the note. The registered holder of any such registered note shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such note, when due, shall be payable to the person presenting the note, but any such note registered as payable to bearer may be registered again in the name of the holder, with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired, and each registration of a note shall be noted by the Trustee on the note. Registration of any note, however, shall not affect the transferability of any coupon thereto belonging, by delivery merely, and payment to the bearer of any such coupon

shall discharge the Company in respect of the interest therein mentioned, whether or not the note shall have been registered.

Sec. 3. The Company will, from time to time, pay and discharge all taxes, assessments, imposts and governmental charges lawfully imposed upon the pledged securities, or upon any part thereof, or upon the income or profits thereof, so that the lien and priority of this indenture shall be fully preserved in respect thereto; provided, however, that nothing contained in this section shall require the Company to pay any such tax, assessment, impost or charge so long as the Company shall, in good faith, and by appropriate legal proceedings, contest the validity thereof, or its being a charge on the pledged securities, and provided also that such delay in payment shall not subject the pledged securities, or any part thereof, to forfeiture or sale. If the Company shall fail to keep this covenant, the Trustee may, and upon the request of the holders of one or more of the notes secured hereby, and upon being provided with adequate funds for that purpose, shall (without prejudice to the rights arising by reason of such default) pay such taxes, assessments and charges; and all amounts so paid, with interest thereon at seven per centum per annum, shall be a charge upon the pledged securities prior to the notes secured hereby, and may be forthwith sued for and recovered of the Company in an appropriate action for that purpose.

Sec. 4. The Company covenants and agrees that it will at any and all times, upon the written request of the Trustee (a) furnish to the Trustee, in such manner as may reasonably be required, a statement or statements, in writing, showing accurately its financial condition, with detailed information as to the assets and liabilities of the Company, and its monthly earnings and operating expenses; and (b) permit the Trustee, its clerks, agents or auditors, for that purpose duly authorized, to inspect its books, accounts, papers, documents and memoranda, and to take from its books, accounts, papers, documents and memoranda such extracts as may be deemed expedient.

Sec. 5. The Company, its successors and assigns, from time to time, on written demand of the Trustee, or its successor or successors, shall make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law, as may be reasonably advised or required, for effectuating the intention of these presents, or for the better assuring and confirming unto the Trustee, and its successor or successors in the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular the pledged securities hereby assigned and transferred to the Trustee, or intended so to be.

ARTICLE III.

Subject to the right of conversion hereinafter provided for, all or any of the notes issued hereunder and secured hereby may be redeemed by the Company on any interest day at 115 per centum of the principal, and accrued interest. If the Company shall elect to redeem any of the notes hereunder, it shall notify the Trustee, at least thirty days prior to the

interest date on which it is proposed to redeem said notes, of the aggregate principal amount of notes which the Company desires to redeem. If it be desired to redeem less than the whole issue, the Trustee shall thereupon draw by lot a number of notes equivalent to the amount specified and shall certify to the Company the numbers of the notes so drawn and the names and addresses of any registered holders thereof. The Company shall thereupon publish a notice that said notes are called for payment on the next ensuing interest day, at least once a week for three weeks in a newspaper of general circulation in the city of Chicago, in the state of Illinois. The notices to be given hereunder shall contain the numbers of the notes to be redeemed (unless the redemption be of the entire issue then outstanding), and shall state that upon presentation of said notes, and the appropriate coupons appertaining thereto, for cancellation, at the office of the Trustee, on or after the next ensuing interest day, the amount payable in respect of the redemption of said notes will be paid to the holder or holders thereof. Within five days after the first publication of such notice, the Company shall mail a copy thereof to the holder of any registered note mentioned in such notice.

Upon the deposit with the Trustee, on or prior to the interest date when said notes are called for payment, of the amount necessary to redeem such notes, and the giving of such notice, the notes so called for payment shall cease to bear interest after such interest date on which they are called for payment, anything in said notes, or the coupons appertaining thereto, or this indenture, to the contrary notwithstanding, and such deposit with the Trustee shall constitute full payment of such notes as between the holders thereof and the Company. As and when said notes are surrendered to the Trustee, they shall be canceled and delivered to the Company. If any note called for payment shall not be presented for payment on the next ensuing interest day after the date of the notice above mentioned, the amount payable in respect of such note shall be held by the Trustee for account of the holder thereof, and shall be paid to the holder of said note, upon presentation for cancellation of said note and the appropriate coupons. The Trustee shall not be chargeable with interest on money deposited with it for the redemption of notes.

ARTICLE IV.

Section 1. At any time when the Company is not in default in the payment of any principal of or interest on any note hereby secured, the Trustee may, and upon the request of the Company, shall

(1) Upon the redemption of any of the notes hereby secured (unless such redemption is made out of the receipts from, or proceeds of the sale of, the pledged securities, or some of them) or upon the surrender by the Company of any such notes for cancellation, deliver to the Company stock pledged hereunder equal at par to ten times the par value of the notes so redeemed or surrendered, and

(2) Apply all payments at any time made to or received by the Trustee upon account of the principal of the pledged securities, whether by volun-

tary payment or out of the proceeds of the sale of any property or of the pledged securities, or otherwise, to the purchase, in the open market, of notes outstanding under this indenture, at not exceeding the redemption price or to the redemption of such notes, all notes so purchased or redeemed to be forthwith canceled. Until so applied all such moneys shall be held as additional security for the notes at any time issued and outstanding under this indenture.

Sec. 2. The Trustee shall for all purposes be considered and held to be the legal owner and holder of the pledged securities, and shall have and may exercise all the rights of such holder or owner, and may prosecute any suit or take any action or proceedings under the pledged securities and any mortgage or deed of trust or other instrument securing the same which the holder or owner thereof might or could take, but the Trustee shall not be obliged to take any action to enforce its rights as the holder of the pledged securities unless requested so to do in writing by the holders of at least one-fourth in amount of the notes outstanding hereunder, and indemnified to its satisfaction, but it may enforce any or all of its rights as the holder of the pledged securities without such request or indemnity if it elect so to do, and in such event any and all expense or liabilities incurred by it in the premises shall be a charge upon the pledged securities, and the proceeds thereof, prior and paramount to the notes hereby secured.

ARTICLE V.

Section 1. No coupon belonging to any note hereby secured which in any way, at or after maturity, shall have been transferred or pledged, separate and apart from the note to which it relates, or which shall in any manner have been kept alive after maturity by extension or by the purchase thereof by or on behalf of the Company, shall be entitled, in case of a default hereunder, to any benefit of or from this indenture, except after the prior payment in full of the principal of the notes issued hereunder, and of all coupons and interest obligations not so transferred, pledged, kept alive or extended.

Sec. 2. In case default shall be made (a) in the payment of any interest on any note or notes hereby secured and outstanding, and any such default shall continue for a period of ninety days, or (b) in the performance of any other covenant or agreement to be performed by the Company, contained herein or in the first mortgage, and such default shall continue for a period of sixty days after demand by the Trustee for performance thereof, then and in every such case, the Trustee may, and upon the written request of the holders of twenty-five per centum in amount of the notes hereby secured, and then outstanding, shall, by notice in writing, delivered to the Company, declared the principal of all the notes hereby secured and then outstanding to be due and payable immediately, and upon such declaration the same shall become and be due and payable immediately, anything in this indenture, or in said notes, to the contrary notwithstanding.

This provision, however, is subject to the condition that if, at any time,

the principal of the said notes shall have been declared due and payable, and all arrears of interest upon such notes, with interest at the rate of seven per centum per annum on the overdue installments of interest, shall be paid by the Company before any sale of the pledged securities shall have been made, and all the other covenants and agreements herein contained shall have been performed by the Company, or their performance shall have been waived, and all expenses or liabilities incurred by reason of any action taken by the Trustee upon account of any such default shall either have been paid or secured to the satisfaction of the Trustee, then, and in every such case, the holders of a majority in amount of the notes hereby secured and then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences, and rescind the declaration of the maturity of the principal of said notes; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Sec. 3. In case (1) default shall be made in the due and punctual payment of the interest of any note hereby secured, and any such default shall continue for a period of sixty days; or in case (2) default shall be made in the payment of the principal of any note hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition to be kept or performed by the company, contained herein, and any such default shall continue for sixty days after written demand of performance by the Trustee, then, and in every such case, the Trustee, personally or by attorney, and in its discretion:

(a) May sell to the highest and best bidder all or any part of the pledged securities, and all right, title, interest, claim and demand therein, and the right of redemption thereof, in one lot and as an entirety, or in separate lots, such as the Trustee shall deem best, and in one sale, or any number of separate sales, held at one time, or any number of times, which said sale or sales shall be made at public auction at such place in the city of Chicago, in the state of Illinois, and at such time or times, and upon such terms, as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; provided, always, that such sale or sales may be made at such other place or places and in such other manner as may be authorized by law; or

(b) May, and upon the request of the holders of one-fourth in amount of the notes outstanding hereunder shall, proceed to protect and enforce its rights and the rights of the noteholders under this indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce the rights aforesaid.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, sale or otherwise, and such proceedings shall have been discontinued or abandoned because of any waiver, or for

any other reason, or shall have been determined adversely to the Trustee, then, and in every such case, the Company and the Trustee shall be restored to their former positions and rights hereunder in respect of the pledged securities, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken. No waiver of any default hereunder shall extend to or shall affect any subsequent default or shall impair any rights or remedies consequent thereon.

Sec. 4. Notice of any sale by the Trustee, pursuant to any provision of this indenture, shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given by publishing the same once in each week for three successive weeks prior to such sale in one daily newspaper published in the city of Chicago, in the state of Illinois, the first publication to be at least three weeks before the date fixed for such sale.

Anything in this indenture contained to the contrary notwithstanding, the holders of a majority in amount of the notes hereby secured, and outstanding from time to time, shall have the right to direct and to control (subject to the limitations above prescribed) the method and place of conducting any and all proceedings for any sale of the pledged securities, or for the foreclosure of this indenture, or for the appointment of a receiver, or the taking of any other appropriate action hereunder.

The Trustee, from time to time, may adjourn any sale or sales by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale, or adjourned sale, or sales, and, without further notice or publication, it may make such sale or sales at the time and place to which the same shall be adjourned.

Sec. 5. Upon the completion of any sale or sales under this indenture, the Trustee shall deliver to the accepted purchaser or purchasers the securities sold, and shall also execute all such deeds, conveyances, bills of sale or other instruments in writing as may be requisite, convenient, necessary or desirable to vest in the purchaser or purchasers the title thereto.

The Trustee, and its successors, hereby are appointed the true and lawful attorney or attorneys irrevocable of the Company and of the pledgor, in its name and stead, or otherwise, to make, execute, acknowledge, and deliver all such deeds, conveyances, bills of sale or other written instruments, the Company hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof.

Any sale or sales made under or by virtue of this indenture whether under the power of sale hereby granted and conferred, or under and by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company of, in and to the property so sold, and shall be a perpetual bar, both in law and in equity, against the pledgor and his assigns and the Company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through, or under, the pledgor and his assigns or the Company, its successors or assigns; and the

receipt of the Trustee, or of the officer conducting such sale, for the consideration money paid at any such sale or sales shall be sufficient discharge to the purchaser, without any liability on the part of the purchaser to see to the application of the purchase money or to be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale or sales.

Sec. 6. In case of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, the principal sums of all notes hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said notes or in this indenture contained to the contrary notwithstanding.

Sec. 7. The purchase money, proceeds and avails of any such sale or sales, together with any sums which then may be held by the Trustee, under any of the provisions of this indenture, as part of the trust estate, or the proceeds thereof, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee, and all other charges which, by the terms hereof or otherwise, are prior to the notes hereby secured, except any charges subject to which said sale shall have been made.

Second: To the payment of the interest on said notes accrued and unpaid in the order of maturity, with interest on overdue coupons at the rate of seven per centum per annum, and if such proceeds be insufficient to make payment in full, then pro rata, subject, however, to the provisions of Section 1 of this article.

Third: To the payment of the whole amount then owing and unpaid upon the notes hereby secured and then outstanding, for principal; and in case such proceeds shall be insufficient to pay in full the principal amount so due and unpaid upon the said notes, then to the payment of such principal, ratably.

Fourth: To the payment of the surplus, if any, to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Sec. 8. In case of any sale hereunder, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to use and apply any notes, and any matured and unpaid coupons, hereby secured, by presenting such notes and coupons, in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such notes and coupons, as his ratable share of such net proceeds, after making any deductions which may be made from the proceeds of sale for costs, expenses, compensation and other charges, and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the sums applicable out of such net proceeds to the payment of and credited upon the notes and coupons so presented; and, at any such sale, any noteholders may bid for and may purchase, and upon compliance with the terms of

sale, may hold, retain and possess and dispose of, such property in their own absolute right, without further accountability.

Sec. 9. In case there shall be any existing judgment against the Company unsatisfied or unsecured by bond on appeal or otherwise for thirty days after demand from the Trustee that it be paid or secured by such bond; or in case the Company shall make any assignment for the benefit of its creditors; or in case in any judicial proceeding, by any other person than the Trustee, acting for and on behalf of the noteholders hereunder, a receiver, or an assignee, or a trustee in bankruptcy shall be appointed of the Company, or a judgment or order entered for the sequestration of its property; then, and in every such case, the Trustee may, and upon request of the holders of a majority in amount of the notes outstanding hereunder, shall proceed to exercise any and all rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided, including the right to declare the principal of the notes hereby secured to be due and payable.

Sec. 10. The Company covenants that (1) in case default shall be made in the payment of any interest on any note or notes at any time outstanding and secured by this indenture, and such default shall continue for a period of sixty days, or (2) in case default shall be made in the payment of the principal of any such notes when the same shall become payable, whether by the maturity of said notes, or by declaration as authorized by this indenture, or by sale, as provided in Section 6 of this article (V), then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the notes and coupons hereby secured then outstanding, the whole amount due and payable on all such notes and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of seven per centum per annum upon the overdue principal and installments of interest; and in case the Company shall fail to pay the same forthwith upon such demand, the Trustee in its own name, and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceeding for the enforcement of the lien of this indenture upon the pledged securities, and the right of the Trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture, or for the foreclosure of the lien hereof; and in case of a sale of the pledged securities, and of the application of the proceeds of such sale to the payment of the debt, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all notes issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no lien of any execution upon property subject to the lien of this indenture, or upon any other

property, shall in any manner or to any extent affect the lien of the Trustee upon the pledged securities, or any part thereof, or any rights, powers or remedies of the Trustee or of the holder of the notes hereby secured; but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee toward payment of the amounts then due and unpaid upon such notes and coupons in respect of which such moneys shall have been collected, ratably and without preference or priority of any kind, except as provided in Section 1 of this article, according to the amounts due and payable upon such notes and coupons respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several notes and coupons, and stamping thereon such payment if only partially paid, and upon surrender thereof if fully paid.

Sec. 11. The Company will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for valuation or appraisal of the pledged securities, or any part thereof, prior to any sale or sales thereof to be made in pursuance of any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right under any statute enacted by any state or otherwise to redeem the property so sold, or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

Sec. 12. No holder of any note or coupon secured hereby shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust hereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder shall previously have given to the Trustee written notice of such default and of the continuance thereof as hereinbefore provided; nor unless, also, the holders of one-fourth in amount of the notes hereby secured then outstanding shall have made written request upon the Trustee, and shall have offered to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding, in its own name (and the Trustee shall have refused or unreasonably delayed to comply with such request), nor unless, also, they or some one or more of them shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution by it of the powers and trusts of this indenture for the benefit of the note-holders, and to any action or cause of action for foreclosure, or for the

appointment of a receiver, or for any other remedy hereunder, it being understood and intended that no one or more holders of notes and coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding notes and coupons.

Sec. 13. Except as herein expressly provided to the contrary, no remedy herein contained, conferred upon or reserved to the Trustee, or to the holders of the notes hereby secured, is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Sec. 14. No delay or omission by the Trustee, or by any holders of the notes hereby secured, to exercise any right or power accruing upon any default as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this article to the Trustee, or to the note holders, may be exercised from time to time, and as often as may be deemed expedient by the Trustee or by the noteholders.

Sec. 15. The holders of two-thirds in amount of all the notes hereby secured for the time being outstanding, by an instrument or instruments in writing, signed by such holders, shall have power to waive any default or defaults under the provisions of this indenture and any rights arising by reason thereof; provided, always, that the obligation of the Company to pay the principal of said notes at their maturity, with the interest thereon, shall continue unimpaired; and provided, further, that no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

ARTICLE VI.

No recourse under or upon any obligation, covenant, or agreement contained in this indenture, or in any note or coupon, or because of the creation of any indebtedness, hereby secured, shall be had against any past, present or future incorporator, stockholder, officer or director of the Company, or of any successor corporation, either directly or through the Company or any such successor corporation, by the enforcement of any assessment or penalty, or by any legal or equitable proceeding by virtue of any statute or otherwise; it being especially agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, incorporators, stockholders, officers or directors of the Company, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the notes or coupons hereby secured, or implied therefrom; and that any and all personal liabilities of every name and nature of,

and any and all rights and claims against, every such incorporator, stockholder, officer or director, whether rising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as a part of the consideration for, the execution of this indenture, and the issuing of the notes and interest obligations secured hereby.

ARTICLE VII.

Any request, direction or other instrument required by this Indenture to be signed and executed by noteholders may be in any number of concurrent writings of similar tenor, and may be signed or executed by such noteholders in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument, or of the writing appointing any such agent, and of the ownership of notes, if made in the following manner, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee, with regard to any action taken by it under such request.

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who, by the laws thereof, has power to take acknowledgments within said jurisdiction, to the effect that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

The fact of the holding of notes hereunder by any noteholder, and the amount and issue number of any such notes, and the date of his holding the same (unless such notes be registered), may be proved by the affidavit of the person claiming to be such holder, if such affidavit shall be deemed by the Trustee to be satisfactory, or by a certificate executed by any trust company, bank, banker or any other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such trust company, bank, banker or other depository the notes described in such certificate. The holding of registered notes shall be proved by the note register.

But nothing in this article contained shall be construed as limiting the Trustee to the proof hereinbefore specified, it being intended that the Trustee may accept any other evidence of the matters herein stated, which to it may seem sufficient.

ARTICLE VIII.

If, when the notes hereby secured shall have become due and payable (whether by lapse of time or by declaration or by exercise of the privilege of redemption), the Company shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the notes and coupons for interest thereon hereby secured then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such notes and coupons the entire amount then due thereon for principal and interest, and shall also pay, or cause to be paid, all other sums payable hereunder by the Company, and shall

well and truly keep and perform all the things herein required to be kept and performed by it, according to the true intent and meaning of this indenture, then, and in that case, the Trustee shall pay to the pledgor all moneys (other than moneys so deposited for the payment of said notes and coupons) and other property then held by it hereunder, and all the property, rights and interests hereby conveyed or pledged shall revert to the pledgor, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case upon demand of the pledgor, and at his cost and expense, shall execute proper instruments acknowledging satisfaction of this indenture, and such deeds of release or conveyance as shall be necessary, proper or requisite to revest in the pledgor the property then subject to this indenture free and discharged from the lien thereof. The deposit of such moneys with the Trustee shall, as to the Company, be deemed a payment of such notes, and shall discharge the liability of the Company thereon, but the Trustee shall not be chargeable with interest on any such deposit.

But nothing herein contained shall be deemed to oblige the Trustee to redeliver any of the pledged securities until such time as the right to redeem shall have become paramount to the right of the noteholder to convert the same into stock of the Company as herein provided.

ARTICLE IX.

The Trustee, for itself and its successors, hereby accepts the trusts and assumes the duties herein created and imposed upon it, but only upon the terms and conditions hereof, including the following, to wit:

(a) The Trustee shall be protected in any action taken by it upon any notice, resolution, vote, request, consent, certificate, affidavit, statement, bond, note or other paper or document believed by it to be genuine, and to have been passed or signed by the proper parties.

(b) The Trustee may select and employ in and about the execution of this trust suitable agents and attorneys, whose reasonable compensation shall be paid to the Trustee by the Company, or, in default of such payment, shall be a charge upon the pledged securities, and the proceeds thereof, paramount to said notes, and for the acts and neglects of such agents and attorneys, if selected with reasonable care, the Trustee shall be in nowise responsible.

(c) The Trustee, save for its gross negligence or willful default, shall not be personally liable for any loss or damage.

(d) It shall be no part of the duty of the Trustee to file or record this indenture as a mortgage or conveyance of real estate, or as a chattel mortgage, or as a conveyance or transfer of personal property, or to procure any further, other or additional instruments of further assurance, or to do any other act which may be necessary to be done for the continuance of the lien hereof, or for giving notice of the existence of such lien, or for extending or supplementing the same. The Trustee shall not be liable for the exercise of any discretion or power hereunder, or mistakes or errors of judgment, nor otherwise in connection with this trust, except for its willful misconduct or gross negligence. The Trustee may, however,

in its discretion advise with legal counsel to be selected and employed by it at the expense of the Company, and shall be fully protected in any action under this indenture taken by it in good faith in accordance with the opinion of such counsel. The Trustee shall not be obliged to take notice of any default until it has received written notice thereof, signed by the holders of at least one-fourth in amount of the notes outstanding hereunder.

(e) The Trustee shall have a first lien upon the pledged securities and fund for its reasonable expenses, counsel fees and compensation, and for all liabilities incurred in and about the execution of the trust hereby created, and the exercise and performance of its powers and duties hereunder, which expenses, counsel fees and compensation the Company covenants and agrees to pay on demand.

(f) The Trustee shall be under no obligation or duty to perform any act hereunder, or defend any suit in respect hereof, unless indemnified to its satisfaction. Excepting as herein expressly otherwise provided, the Trustee shall not be bound to recognize any person as a noteholder, unless and until his notes are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

(g) The recital of facts herein and in said notes contained shall be taken as statements by the Company, and shall not be construed as made by the Trustee.

(h) It shall be no part of the duty of the Trustee to pay any taxes, assessments, or other levies on the pledged securities, or to keep itself informed with respect to any such matters.

(i) In case at any time it shall be necessary or proper for the Trustee, or its successor or successors, to make any investigation respecting any fact preparatory to taking or not taking any action or doing or refraining from doing anything under this indenture, as such Trustee, the certificate of the Company, signed by its president or vice-president, attested by its secretary or assistant secretary, under the corporate seal, and verified by the affidavit of the president, vice-president or general manager of the Company, shall be sufficient evidence of such fact to protect the Trustee, or its successor or successors, in any action it or they may take or refrain from taking by reason of the supposed existence of such fact.

(j) The Trustee shall have no responsibility for the validity of this indenture, or of the execution or acknowledgment thereof, or of any note secured hereby; nor for the nature, extent or amount of the security afforded hereby; nor shall it be responsible for any breach by the Company of any covenant in this indenture contained.

(k) The Trustee shall have no responsibility for the form, validity, genuineness, sufficiency or effect of any of the pledged securities.

(l) The Trustee, and any successor or successors hereafter appointed, may resign and be discharged of the trust hereby created by written notice thereof to the Company, and by publication at least once in each week for four successive weeks in a daily newspaper published in the city of Chicago, Illinois.

(m) Any request or consent of the owner of any note shall bind all future owners of the same note in respect of anything done or suffered by the Trustee in pursuance thereof.

(n) The Trustee may buy, sell, own, hold and deal in any of the notes or coupons issued hereunder, and may join in any action which any noteholder may be entitled to take, with like effect as if the Trustee were not a party to this indenture.

ARTICLE X.

The Trustee, or any trustee hereafter appointed, may be removed at any time by an instrument or concurrent instruments in writing, signed by the holders of not less than two-thirds in amount of the notes hereby secured and then outstanding. In case at any time the Trustee, or any Trustee hereafter appointed, shall die, or resign, or shall be removed, or otherwise shall become incapable of acting, a successor or successors to such Trustee may be appointed by the holders of a majority in amount of the notes hereby secured and then outstanding, by an instrument or concurrent instruments, signed by such noteholders, or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared, that in case at any time there shall be a vacancy in the office of Trustee hereunder, the Company, by an instrument executed by order of its board of directors, may appoint a trustee or trustees to fill such vacancy until a new trustee or trustees shall be appointed by the noteholders, as herein authorized. The Company shall publish a notice of any such appointment by it made once in each week for four successive weeks in a daily newspaper published in the city of Chicago, Illinois, and any new trustee or trustees appointed by the Company shall immediately and without further act be superseded by a trustee or trustees appointed by the noteholders in the manner above provided. If neither the Company nor the noteholders shall appoint a successor trustee within a reasonable time, such successor trustee may be appointed by any court of competent jurisdiction upon the application of any noteholder or of the trustee last in office. The trustee (if there be but one) and one of the trustees (if there be more than one), whether appointed by the noteholders or by the Company or by the decree of any court, shall always be a trust company in good standing, doing business in the city of Chicago, having a capital and surplus aggregating one million dollars, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any new trustee or trustees appointed hereunder shall execute, acknowledge and deliver to the trustee or trustees last in office, and also to the Company, an instrument accepting such appointment hereunder, and thereupon such new trustee or trustees, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its or their predecessor in trust hereunder, with like effect as if originally named as trustee or trustees herein; but the trustee or trustees ceasing to act shall, nevertheless, on the written request of the Company, or of the new trustee or trustees,

execute and deliver an instrument transferring to such new trustee or trustees, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee or trustees so ceasing to act, and shall duly assign, transfer and deliver the pledged securities held by such trustee or trustees to the new trustee or trustees. Should any deed, conveyance or instrument in writing from the Company be required by any new trustee or trustees for more fully and certainly vesting in and confirming to such new trustee or trustees such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, upon request, be made, executed, acknowledged and delivered by it.

ARTICLE XI.

Section 1. All of the covenants, stipulations, promises, undertakings and agreements herein contained, by or on behalf of the Company, shall bind and inure to the benefit of its successors and assigns, whether so specified or not. For all purposes of this indenture, including the execution, issue and use of any of the notes hereby secured, the term "Company" includes and means not only the party of the first part hereto, but also its successors and assigns.

Sec. 2. The words "trustee" and "trustees" mean the trustee or trustees for the time being, whether one or more, and whether original or substituted. The words "note" and "noteholder" shall include the plural as well as the singular number, unless otherwise specified. The word "coupons" refers to the coupons attached to the notes secured hereby.

In Witness Whereof, The Anglo-Canadian Construction Corporation has caused this indenture to be signed in its name and behalf by its president, and its corporate seal to be hereunto affixed, and to be attested by its secretary, the said pledgor has hereunto subscribed his name, and the said to evidence its acceptance of the trust hereby created, has caused this indenture to be signed in its name and behalf by its president, and its corporate seal to be hereunto affixed and to be attested by its secretary, all as of the day and year first above written.

ANGLO-CANADIAN CONSTRUCTION CORPORATION.

By.....

President.

Attest:

.....

Secretary.

Executed by Anglo-Canadian Construction Corporation

in the presence of:

.....

.....

Witnesses.

THE TRUST COMPANY.

By.....

..... President.

Attest:

.....

..... Secretary.

Executed by The Company

in the presence of:

.....

.....

Witnesses.

State of Illinois, County of Cook, ss.

On the day of August, A. D. 1927, personally appeared before me and, who being by me duly sworn did say that the said is the vice-president, and the said is the secretary, of Anglo-Canadian Construction Corporation, the grantor in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of the written consent of a majority of its stockholders and by authority of a resolution of its board of directors, and said and, respectively acknowledged to me that said corporation executed the same.

My commission expires

Witness my hand and notarial seal, this day of
....., A. D. 1927.

.....
Notary Public, Cook County, Illinois.

State of Illinois, County of Cook, ss.

On the day of August, A. D. 1927, personally appeared before me and, who being by me duly sworn did say that the said is the president, and the said is the secretary of The Trust Company, the grantee in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and said and respectively acknowledged to me that said corporation executed the same.

My commission expires

Witness my hand and notarial seal, this day of
....., A. D. 1927.

.....
Notary Public, Cook County, Illinois.

§ 901. Blue Sky Permit to Issue and Sell Bonds.

State Corporation Department of the State of California.

In the matter of the application of

MARKWELL BUILDING COMPANY

for a certificate authorizing it to sell its securities.

This is an application for authority to sell, at 93, part of an issue of six per cent bonds aggregating \$600,000 in face value, dated November 1, 1927,

and due November 1, 1942, subject to prior redemption at 102. They are to be secured by a deed of trust or mortgage to the Long Beach Savings Bank & Trust Co., (a) of a lot, commonly called Lot A, Tract 604, situated adjacent to and easterly of the municipal pier in Long Beach, California, and having a frontage of approximately 170 feet on Pine Avenue and on Pier Place, which bound it on the west and the east respectively, and of about 134 feet on Seaside Boulevard, and on the strip of land approximately 117 feet wide, owned by the city, south of Ocean Avenue, commonly called the "Park," which, respectively, bound it on the south and on the north; and (b) of an easement in said strip granted April 6, 1927, by the city of Long Beach to J. Fred Markwell et al., under which such grantees and their assigns, subject to the termination of such easement upon breach of any of the conditions of such grant imposed by the city, have the right (1) to use the sub-surface of an irregularly shaped parcel at the northwesterly corner of Lot A, extending $51\frac{1}{2}$ feet along its northerly end and about 30 feet along Pine Avenue, for rooms for storage, machinery, tanks, and other purposes connected with a building on Lot A to be not less than three stories in height; and (2) of free access from Lot A and any buildings thereon, for all persons, across said park. Among other conditions so imposed were the following: (1) that the grantees should, within twelve months, beautify and improve all that part of the "park" bounded by Ocean Avenue, Pier Place, Pine Avenue, and Lot A, by constructing walks, drives, retaining walls, balustrades, and lighting posts, in accordance with the plan therefor adopted by the city council and to the satisfaction of the city's commissioner of public affairs; (2) that they should forthwith open and thereafter maintain a thirty-foot arcade across Lot A and through the building on it, to Seaside Boulevard, commonly known as "The Pike"; and (3) that during the life of the easement they should at their own expense light the arcade and the park at night and maintain a lawn on the unpaved parts of the park used by them, in a manner satisfactory to said commissioner of public affairs.

In 1914 said Markwell and his associates began the erection on Lot A of a six-story concrete, Class A, fireproof office and store building. When the foundations had been laid and the steel frame erected, work was suspended, and the structure ever since has remained unfinished.

Markwell Building Company, which is a California corporation organized by said Markwell and his associates for the purpose of acquiring and holding said property, now proposes to complete the lower two stories and to partially complete the third, substantially as it was originally intended that this part of the building should be finished.

The proceeds of the bonds to be sold are to be applied first to the payment of \$124,250 and accrued interest, secured by a mortgage now on said Lot A, and the residue to the completion of said work. No detailed plans or specifications therefor have been prepared, but it is estimated that the cost will exceed \$130,000.

From appraisements and estimates filed with the application it appears, (a) that the present market value of Lot A, exclusive of the improvements,

is approximately \$190,000, and that its future value will equal or exceed this amount; (b) that the fair cost and present value of the concrete work and foundations is about \$29,500; (c) that the cost of the steel as erected was about \$73,500, and that its reproduction cost or value will not be less during the life of the proposed bonds; (d) that the fair cost of reproducing, at any time during the life of the bonds, the work proposed to be presently done on the building will not be substantially less than 60 per cent of its present cost; (e) that the gross income that may be anticipated from rentals will be \$52,800, or more, per annum; and (f) that the fixed annual charges for operation, maintenance, repair, and depreciation of the building, for taxes and for interest and sinking fund requirements on the bonds, as herein authorized, will not exceed \$37,500.

For the foregoing reasons, Markwell Building Company is permitted and authorized to sell and issue, for lawful money of the United States and at prices netting the company not less than 93 per cent of the par or face value thereof, bonds of said issue above described to an amount not exceeding in their aggregate par or face value \$225,000, but upon each of the following express conditions:

(a) That said bonds shall be substantially in the form of bond set forth in a copy of the proposed indenture to be executed to secure the same, filed with said application November 16, 1927, and marked for identification "Exhibit A."

(b) That the form of said indenture, prior to its execution, shall be modified and altered as follows:

First, so as to include in the description of the property to be thereby mortgaged or transferred to said trustee, a specific and definite description of said easement granted by the city of Long Beach;

Second, so as to provide that the company shall annually, on or before the 1st day of November in each year during the life of said bonds, pay to the trustee a sum of money equal to not less than three per cent of the face value of the maximum amount of bonds at any time issued or outstanding, to be applied by such trustee to the redemption of bonds in accordance with the provision of said indenture, or in lieu of such payment, shall deliver to the trustee for cancellation bonds, theretofore issued and outstanding, of a face value equal to such sum; and

Third, so as to provide that the company, while any of said bonds shall be outstanding, shall not declare or pay any dividends to its stockholders, except with the consent of the commissioner of corporations or of said trustee first obtained in writing so to do, and shall not pay, or incur any obligation to pay, to its officers, agents, servants, and employees, any salaries or compensation which in the aggregate thereof shall exceed the sum to be from time to time authorized by said commissioner or by said trustee to be paid or incurred for such purposes.

(c) That prior to the execution, certification, selling, or issuing of said bonds, the company shall,

First, duly execute and acknowledge said indenture as so modified, and

cause the same to be recorded in the office of the county recorder of the county of Los Angeles, state of California, as a deed or deed of trust and as a mortgage of real property;

Second, procure and file with the commissioner of corporations a certificate of the Title Insurance and Trust Company, of Los Angeles, made as of a date subsequent to the recording of said indenture, and certifying, in effect, that the title in fee to said Lot A is then vested in said applicant, free from all reservations, exceptions, and conditions impairing the security for said bonds, and free from all incumbrances other than said mortgage to which reference is hereinbefore made, and any taxes then a lien thereon, the payment of which shall not then be delinquent, and that the easement purporting to have been granted by said city of Long Beach to said Fred Markwell et al., April 6, 1927, is vested in said company subject only to the conditions recited in said indenture purporting to grant the same;

Third, deposit with said trustee, to be retained by it, detailed plans and specifications for the making of said improvements on said building, approved in writing by the commissioner of corporations and by the city council of the city of Long Beach by a resolution or ordinance duly adopted or passed by such council, wherein it shall be resolved or ordained, in effect, that the completion of said building in accordance with such plans and specifications will be, and will be deemed by said city to be, a full performance of and compliance with any condition, either express or implied, in said indenture contained, relating to the height of said building or the number of stories therein, precedent to the use by said grantees, or their assigns, of said park, or any part thereof, for any of the purposes in said indenture provided; and

Fourth, deposit with said trustee, (a) a contract in writing, in a form approved by the commissioner of corporations, between said company and a reputable and responsible contractor for the construction and completion of said improvements in accordance with the plans and specifications deposited with said trustee; (b) a bond in a form approved by said commissioner, with sufficient sureties, for the performance of said contract; and (c) a bond to said trustee, approved by the commissioner of corporations, as to its form and as to the obligors and sureties executing the same, in a penal sum not less than the difference between said contract price and the sum of \$65,000, conditioned that said obligors will pay to said contractor, for and on behalf of said company and for its use and benefit all of the installments of said contract price as they shall become due and payable that the proceeds arising from the sale of bonds herein authorized, applicable to such payment, as herein provided, shall be insufficient to pay or satisfy. "

(d) That the purchase price of said bonds shall be by the purchasers thereof paid to and deposited with said trustee, or with such other depository as may be designated by said company and approved by said commissioner of corporations, to be paid out and expended by it as follows, and not otherwise: First, to the payment and satisfaction of said mortgage

now on said Lot A, and of any other incumbrance thereon (save taxes not due or payable) the lien of which is prior to the lien thereon created by the indenture securing the payment of said bonds; second, to the payment of any architects' fees or charges for preparing plans and specifications and other papers, drawings, or instruments for or relating to said improvements, and for supervising the construction thereof, in accordance with a contract or contracts in writing therefor, made by said company and approved by said commissioner of corporations; third, any fees or charges due or payable to the city of Long Beach, or to any officer thereof, for or on account of the issuing of any permit for such improvement, or for supervising or inspecting the same during its construction; and, fourth, any residue of such proceeds to the contractor erecting such improvement, in payment of installments of the contract price for such improvement as they become due and payable, but only upon and in accordance with a certificate or certificates in writing signed by the supervising architect of such improvement, certifying that a payment is due and payable to such contractor, and specifying the amount thereof.

(e) That none of said bonds shall be executed, certified, or delivered until bona fide subscriptions shall have been first obtained from responsible subscribers for all of the bonds herein authorized to be sold.

(f) That a true copy of this permit be exhibited and delivered to each prospective subscriber for or purchaser of said securities before his subscription shall be taken therefor or any sale thereof made to him.

The issuance of this certificate is permissive only and does not constitute a recommendation or endorsement of said securities.

Dated: Sacramento, Calif., January 26, 1927.

.....
Commissioner of Corporations.

CHAPTER LI.

AMENDING ARTICLES OF INCORPORATION.

- § 902. Amendment of Articles—In General.
- § 903. Methods for Amending Articles.
- § 904. Resolution of Directors Amending Articles of Incorporation.
- § 905. Assent of the Members or Stockholders.
- § 906. Publication of Notice of Amendment.
- § 907. Notice of Amendment of Articles of Incorporation.
- § 908. Filing the Amended Articles.
- § 909. Certificate of Amendment of Articles of Incorporation.
- § 910. Certificate of Amendment of Articles of Incorporation. [Another Form.]
- § 911. Effect of Filing Amendment to Articles.
- § 912. Effect of Failure to File Amendments to Articles.

§ 902. **Amendment of Articles—In General.**—In most states, there are general laws authorizing corporations formed thereunder to amend their articles or certificates of incorporation by complying with certain formalities. It is generally provided that any corporation may amend its articles to set forth a new name; to alter or repeal or add to provisions relative to its purposes; to change its principal place of business; to state a date to which its term of existence has been extended; to increase or diminish its number of directors; to increase or diminish the amount of its capital stock or the number of shares and the par value thereof, to provide for the classification of its stock into preferred and common shares; or to change the nature and extent of preference; and generally to make any other amendment not contrary to law.¹

§ 903. **Methods for Amending Articles.**—The statutes of most states provide that as much publicity shall be given the amendment of articles of incorporation as was given their original adoption and filing. In some states there are two methods by which the articles may be amended, one by the directors in conjunction with

¹ California Civil Code, sec. 362. Under the California statute a corporation cannot change its name or its principal place of business, extend or reduce its term of existence, or increase or diminish its number of directors or its capital stock, by merely amending its articles, but must comply with the special provisions of the law applicable thereto.

the members or stockholders and the other by the directors alone. Under either method, a resolution must first be passed by a majority of the board of directors providing for the proposed amendment. The resolution may be as follows:

§ 904. Resolution of Directors Amending Articles of Incorporation.

Resolved, That the articles of incorporation of the New Era Printing Company be amended as follows:

Paragraph number five shall be amended so that it shall, as amended, read as follows, to wit:

(Here insert paragraph as amended.)

§ 905. Assent of the Members or Stockholders.—The proposed amendment must then (following the first method) be ratified by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of such corporation, or the written assent of the majority of the members if there is no capital stock. The written assent may take the following form:

ASSENT BY STOCKHOLDERS TO AMENDMENT OF ARTICLES.

We, the undersigned stockholders of the New Era Printing Company, who have subscribed for and own more than two-thirds of the subscribed capital stock thereof, hereby and by these presents do assent to, confirm and ratify, the amendment of the articles of incorporation made by its board of directors on the 1st day of August, 1927, which amendment is as follows, to wit:

(Here insert amendment.)

E. P. JONES.
M. L. BENNETT.
ASA ROBERTS.
JAMES WILLARD.
J. R. WOODLAW.
JOHN GOODE.
A. J. KNOX.

§ 906. Publication of Notice of Amendment.—Instead, however, of securing the ratification of the stockholders, the directors may follow the other method mentioned, under which a notice of the intention to make such amendment must first be advertised for the time required by law in some newspaper published in the town, city, county, or city and county in which the principal place

of business of the corporation is located, before the filing of the proposed amendment. The notice may be as follows:

§ 907. Notice of Amendment of Articles of Incorporation.

Notice is hereby given that, pursuant to a resolution of the board of directors of the New Era Printing Company, a corporation, it is the intention of said corporation to amend its articles of incorporation as follows:
(Here insert amendment.)

Dated August 3, 1927.

K. F. WESTON, Secretary.

This method may be desirable where much labor might be necessary in order to get the assent of widely scattered stockholders.

§ 908. Filing the Amended Articles.—Upon the adoption of amended articles, a copy thereof must be certified to as correct by the president and secretary and a majority of the directors and the corporate seal affixed to the certificate. The certificate is also required to set forth the proceedings by virtue of which the amended articles were adopted. A copy of the amended articles of incorporation thus certified must be filed in the office of the secretary of state, whereupon the corporation has the same powers and the stockholders thereof are subject to the same liabilities as if the amendment had been embraced in the original articles. The secretary of state is required forthwith to issue a certified copy of the amended articles and to transmit such copy to the county clerk of the county in which the principal place of business of the corporation was situated at the time of incorporation, to be filed by such county clerk upon payment of the prescribed fee. And a copy of the amended articles certified by the secretary of state is required to be filed in the office of the county clerk of every other county in which the corporation has or holds real property.²

§ 909. Certificate of Amendment of Articles of Incorporation.

We, the undersigned, president and secretary, and we, the undersigned, a majority of the directors of the Dixie Lumber & Supply Company, do hereby certify:

That the Dixie Lumber & Supply Company was incorporated under the laws of the state of California on the 14th day of May, 1921.

That the number of directors of said corporation was increased on the 15th day of December, 1926, from three to five by proceedings duly had,

² California Civil Code, sec. 362.

and that a certificate over the corporate seal, setting forth the action taken by the stockholders stating the new number of directors has been made by the president and secretary of said corporation and filed in the office of the secretary of state.

That a special meeting of the board of directors of the above named corporation was held at the office of said corporation in the city of San Diego, state of California, on the 12th day of January, 1927, at which said meeting a majority of all the directors of said corporation were present; that at said meeting a resolution was regularly proposed, voted upon and adopted by the unanimous vote of all said directors, amending the articles of incorporation of said corporation as hereinafter set forth; that at said meeting the holders and owners of more than two-thirds ($\frac{2}{3}$) of all of the subscribed capital stock of said corporation had previously consented in writing to the amendment of the articles of incorporation.

And, we do further certify that the following is a full, true and correct copy of said assent of said stockholders to the amendment of the articles of incorporation:

"Consent of Stockholders to Amend Articles.

"Know All Men by These Presents: That we, the undersigned, owners and holders of more than two-thirds ($\frac{2}{3}$) of the issued capital stock of the Dixie Lumber & Supply Company, organized and existing under the laws of the state of California, and having its principal place of business at San Diego, in the county of San Diego, state of California, to wit: The owners and holders of 966 50/100 shares of the capital stock of this corporation do hereby consent in writing, and authorize, empower and direct the board of directors and officers of this corporation to amend paragraph number five of the articles of incorporation to read as follows, to wit:

"That the number of the board of directors of said corporation shall be five (5); that the names and residences of the directors who were appointed for the first year, are:

Names. Residences.

Howard H. Johnson.....	San Diego, California
J. H. Bjornstad.....	San Diego, California
Hugh Kelzer	San Diego, California

"That the names and residences of the board of directors appointed for the present year, are:

Names. Residences.

J. H. Bjornstad.....	San Diego, California
A. A. Jensen.....	San Diego, California
H. L. Gurney.....	San Diego, California
R. H. Gurney.....	San Diego, California
William Cowling	San Diego, California

"Dated: January 12, 1927.

J. H. Bjornstad, owning and holding.....	775	shares
H. L. Gurney, owning and holding.....	106	shares
Arthur A. Jensen, owning and holding.....	85 50/100	shares"

And we do further certify that Exhibit "A," attached hereto, is a full, true and correct copy of said articles of incorporation as thus amended.

In Witness Whereof, We the said president and said secretary, and we, the said directors of said corporation, have hereunto set our hands and affixed the seal of said corporation, this 12th day of January, 1927.

J. H. BJORNSTAD,

President.

ARTHUR A. JENSEN,

Secretary.

J. H. BJORNSTAD,

H. L. GURNEY,

ARTHUR A. JENSEN,

(Seal.)

Members of the Board of Directors of said Corporation,
and a majority thereof.

State of California, County of San Diego, ss.

On this 12th day of January, 1927, before me, Annette Van R. Masten, a notary public in and for said county of San Diego, state of California, residing therein, duly commissioned and sworn, personally appeared J. H. Bjornstad, known to me to be the president of the Dixie Lumber & Supply Company, a corporation, described in the within and annexed instrument, whose name is subscribed to said instrument as such president, and A. A. Jensen, known to me to be the secretary of said corporation, whose name is subscribed to said instrument as such secretary, and they severally acknowledged to me that they executed said instrument as president and secretary respectively of said corporation; and on the same day personally appeared before me J. H. Bjornstad, A. A. Jensen and H. L. Gurney, known to me to be the directors of said corporation and to be and to constitute a majority of the directors of said corporation, whose names are subscribed to said instrument as such directors, and as a majority thereof, and they severally acknowledged to me that they executed said instrument as directors of said Dixie Lumber & Supply Company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county of San Diego, state of California, the day and year in this certificate last above written.

(Seal.)

ANNETTE VAN R. MASTEN,

Notary Public in and for the County of San Diego,
State of California.

My commission expires Jan. 27, 1929.

EXHIBIT "A."

Amended Articles of Incorporation.

Be It Known, That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the state of California.

And We Hereby Certify:

First: That the name of said corporation is the Dixie Lumber & Supply Company.

Second: That the purposes for which it is formed are to carry on the business of general lumber and builders' supply business; to deal in lumber, roofing, doors, windows, sashes, hardware, sand, cement, lime, gravel; to manufacture doors, windows, fixtures; to buy and sell real estate, mortgage and dispose of same; to build houses, buildings and other structures of all kinds and descriptions; and to do any and all other acts generally connected with a lumber or general builders' supply business.

Third: That the place where its principal business is to be transacted shall be in the city of San Diego, county of San Diego, state of California.

Fourth: That the term for which it is to exist is fifty (50) years from and after the date of its incorporation.

Fifth: That the number of the board of directors of said corporation shall be five (5); that the names and residences of the directors who were appointed for the first year, are:

Names.	Residences.
Howard H. Johnson.....	San Diego, California
J. H. Bjornstad.....	San Diego, California
Hugh Kelzer	San Diego, California

That the names and residences of the board of directors appointed for the present year, are:

Names.	Residences.
J. H. Bjornstad.....	San Diego, California
A. A. Jensen.....	San Diego, California
H. L. Gurney.....	San Diego, California
R. H. Gurney.....	San Diego, California
William Cowling	San Diego, California

(As amended January, 1927.)

Sixth: That the amount of the capital stock of this corporation shall be two hundred fifty thousand dollars (\$250,000), divided into twenty-five hundred (2500) shares of the par value of one hundred dollars (\$100) each. (As amended December 29th, 1924.)

Seventh: That the amount of said capital stock which has been actually subscribed is twenty-three thousand nine hundred dollars (\$23,900), and the following are the names of the persons by whom the same has been subscribed, to wit:

J. H. Bjornstad.....	\$9500
Howard H. Johnson.....	9500
A. Finell	1500
Hugh Kelzer	2000
A. A. Jensen.....	1000
W. A. Zimmerman.....	200
Joe Restine	200

and that said sums have actually been paid in.

In Witness Whereof, We have hereunto set our hands this
11th day of May, 1921.

J. H. BJORNSTAD.
HOWARD H. JOHNSON.
A. FINELL.
HUGH KELZER.
A. A. JENSEN.
W. A. ZIMMERMAN.
JOE RESTINE,³

§ 910. Certificate of Amendment of Articles of Incorporation. [Another Form.]

Whereas, Indian Valley Electric Light and Power Company was incorporated under the laws of the state of California, on the 7th day of October, 1920; and

Whereas, By proceedings duly had the name of said corporation was changed to Plumas Light and Power Company; and

Whereas, By proceedings duly had the principal place of business of said corporation was changed to the city and county of San Francisco, state of California; and

Whereas, By proceedings duly had the number of directors of said corporation was increased from three to five; and

Whereas, By proceedings duly had the amount of capital stock of said corporation was increased to five hundred thousand dollars (\$500,000), dividend into five hundred thousand (500,000) shares of the par value of one dollar (\$1) each; and

Whereas, The articles of incorporation of said corporation were duly amended so as to read as herein set forth, by the unanimous vote of the directors of said corporation, and the written consent of stockholders representing more than two-thirds ($\frac{2}{3}$) of the subscribed capital stock of said corporation.

Now, Therefore, We, the president and the secretary of said corporation, and we, the majority of the directors of said corporation, do hereby certify that the following is a full, true, and correct copy of the articles of incorporation of Plumas Light and Power Company, as amended:

"Amended Articles of Incorporation.

"Know All Men by These Presents:

"That we, the undersigned, all of whom are citizens and residents of the state of California, do voluntarily associate ourselves together for the pur-

³ California Civil Code, sec. 362, does not require an acknowledgment to the amended articles—the certificate of the president and secretary of the corporation being a sufficient authentication thereof. See *California, etc., Light Co. v. Jordan*, 19 Cal. App. 536, 126 Pac. 598.

pose of forming a corporation under the laws of the state of California, and we do hereby certify as follows:

"First: That the name of said corporation is Plumas Light and Power Company.

"Second: That the place where the principal business of said corporation is to be transacted is the city and county of San Francisco, state of California.

"Third: That the term for which it is to exist is fifty (50) years from and after the date of its incorporation.

"Fourth: That the number of the board of directors of said corporation shall be five (5); that the names and residences of the directors who were appointed for the first year are:

Names.	Residences.
R. N. Pierce.....	Quincy, Plumas County, Cal.
Amos Dodd	Quincy, Plumas County, Cal.
Howard Ross	Quincy, Plumas County, Cal.

"That the names and residences of the board of directors appointed for the present year are:

Names.	Residences.
R. N. Pierce.....	San Francisco, Cal.
Amos Dodd	San Francisco, Cal.
Howard Ross	San Francisco, Cal.
George Sims	San Francisco, Cal.
Henry R. Munton.....	San Francisco, Cal.

"Fifth: That the amount of the capital stock of said corporation shall be five hundred thousand dollars (\$500,000), divided into five thousand (5000) shares of the par value of one hundred dollars (\$100) each.

"Sixth: That the amount of the capital stock which was actually subscribed at the incorporation of this company was fifteen dollars (\$15), and the following are the names and amounts by whom the same were subscribed:

Name of Subscriber.	No. of Shares.	Amount.
R. N. Pierce.....	Five.....	\$5.00
Amos Dodd	Five.....	5.00
Howard Ross	Five.....	5.00

"Seventh: That the purposes for which this corporation is formed are:

"To generate, make, and produce by water power, or by other means, and to buy and sell, transmit and distribute for sale and use electricity and electric current for light, power, and heat, and for all other purposes and objects for which such current can now or may hereafter be used and applied, and to acquire all kinds of property, and to do each and every act necessary and convenient to generate, make, produce, transmit, distribute, buy, sell, and use such electric current.

"To construct, acquire, purchase, hold, lease, own, operate, and transfer all kinds of electrical and other machinery, electrical and other devices for

the generation, transmission, use, distribution, and application of electricity and electrical current.

"To buy, acquire, hold, sell, lease, mortgage, obtain by condemnation and otherwise, hypothecate and deal in real estate, franchises, rights of way, and personal property of all kinds; and to acquire by condemnation and otherwise, sell, lease, and deal in water, the use of water and water rights.

"To furnish and supply electrical power, heat, power of all kinds, water and water power to cities, towns, municipal corporations, private corporations, firms, and individuals.

"To make and perform any contract that an individual might or could, in the furtherance of the above purposes or otherwise.

"In Witness Whereof, We have hereunto subscribed our names, this 7th day of October, 1920.

"R. N. PIERCE.

"AMOS DODD.

"HOWARD ROSS." 4

And, we do further certify that the following is a full, true and correct copy of said assent of said stockholders to the amendment of the articles of incorporation:

"Assent of Stockholders.

"We, the undersigned, stockholders owning and holding more than two-thirds ($\frac{2}{3}$) of the subscribed capital stock of Plumas Light and Power Company, do hereby assent to the amendment of the articles of incorporation of this company in the manner and form hereinbefore set forth:

Henry R. Munton, owning and holding..... 200,000 shares

R. N. Pierce, owning and holding..... 15,000 shares

Amos Dodd 1,000 shares

Howard Ross, owning and holding..... 1,000 shares

George Sims, owning and holding..... 150,000 shares

"Dated: August 25, 1926."

In Witness Whereof, We, the said president and said secretary, and we, the said directors of said corporation, have hereunto set our hands and affixed the seal of said corporation, on this 7th day of September, 1926.

R. N. PIERCE,

President of Plumas Light and Power Company.

(Seal.)

AMOS DODD,

Secretary of Plumas Light and Power Company.

R. N. PIERCE,

AMOS DODD,

HOWARD ROSS,

Members of the Board of Directors of said Corporation,
and a majority thereof.

⁴ California Civil Code, sec. 362, does not require an acknowledgment to the amended articles. See California, etc., Light Co. v. Jordan, 19 Cal. App. 536, 126 Pac. 598. See preceding form.

State of California, County of San Francisco, ss.

On this 7th day of September, 1926, before me, George Castro, a notary public, in and for the said county of San Francisco, state of California, residing therein, duly commissioned and sworn; personally appeared R. N. Pierce, known to me to be the president of the Plumas Light and Power Company, a corporation described in the within and annexed instrument, whose name is subscribed to said instrument as such president, and Amos Dodd, known to me to be the secretary of said company, whose name is subscribed to said instrument as such secretary, and they severally acknowledged to me that they executed said instrument as president and secretary respectively of said corporation; and on the same day personally appeared before me, R. N. Pierce, Amos Dodd, Howard Ross, known to me to be the directors of said company and to be and to constitute a majority of the directors of said corporation, whose names are subscribed to said instrument as such directors, and as a majority thereof, and they severally acknowledged to me that they executed said instrument as directors of said company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county of San Francisco, state of California, the day and year in this certificate last above written.

(Seal.)

GEORGE CASTRO,

Notary Public in and for the County of San Francisco,
State of California.

§ 911. Effect of Filing Amendment to Articles.—From the time of so filing such copy of the amended articles of incorporation, such corporation has the same powers, and the stockholders thereof are thereafter subject to the same liabilities, as if such amendment had been embraced in the original articles of incorporation.⁵

§ 912. Effect of Failure to File Amendment to Articles.—Any corporation which shall amend its articles of incorporation and shall fail to file copies of its amended articles, is subject to the same penalties and liabilities as for a failure of corporations to file copies of the original articles.⁶

⁵ California Civil Code, sec. 362.

⁶ California Civil Code, sec. 362.

CHAPTER LII.

CHANGE OF CORPORATE NAME.

- § 913. Change of Corporate Name—In General.
- § 914. Who May Object to Change.
- § 915. Judicial Proceedings for Change of Name.
- § 916. Name Which May Be Chosen.
- § 917. Certificate of Secretary of State on Application to Change Name.
- § 918. Resolution by Board of Directors.
- § 919. Resolution by Stockholders.
- § 920. Petition for Change of Name.
- § 921. Order to Show Cause on Change of Name.
- § 922. Objections to Change of Name.
- § 923. Decree of Change of Name.
- § 924. Filing of Decree Changing Name.
- § 925. Certificate to Decree of Change of Name.
- § 926. Certificate of Change of Corporate Name.
- § 926a. Certificate of Change of Corporate Name. [Another Form.]
- § 926b. Affidavit as to Change of Corporate Name.
- § 926c. Effect of Change of Corporate Name.

§ 913. **Change of Corporate Name—In General.**—A corporation has no right or power of itself to change or alter the name originally selected by it without recourse to such formal proceedings as are prescribed by law.¹ The mere change of name by a corporation does not operate as a creation of a new corporation, or affect any right which it had under its original name.² Nor will it enable a company to avoid liability.³ The fact that the name has been changed by order of court cannot aid the members of the corporation in diverting its property to unauthorized uses;⁴ and a mere organization under a changed name cannot be used to hide a fraudulent transfer of the corporate property from creditors.⁵ It

¹ *Cincinnati Cooperage Co. v. Bate*, 96 Ky. 356, 26 S. W. 538, 49 A. S. R. 300; *Pilsen Brewing Co. v. Wallace*, 291 Ill. 59, 125 N. E. 714, 8 A. L. R. 579.

² *Peever Mercantile Co. v. State Mutual Fire Assoc.*, 23 S. D. 1, 119 N. W. 1008, 19 A. C. 1236.

³ *White v. Atlanta B. & A. R. Co.*, 5 Ga. App. 308, 63 S. E. 234; *Dean v. LaMotte Lead Co.*, 59 Mo. 523; *Armour v. E. Bement's Sons*, 62 C. C. A. 142, 123 Fed. 56.

⁴ *Baker v. Ducker*, 79 Cal. 365, 21 Pac. 764.

⁵ *Higgins v. California Petroleum, etc., Co.*, 147 Cal. 363, 81 Pac. 1070.

has been held that an unauthorized change of the name of a corporation does not destroy the corporate identity and render its officers or stockholders, who thereafter contract in the new name liable as partners.⁶ However, the opposite conclusion has been reached.⁷

§ 914. Who May Object to Change.—The right of a corporation to change its name cannot be questioned in any private suit to which it is a party. Such right can be questioned only at the suit of the state.⁸ The regularity of the proceedings to change the name of a corporation cannot be raised on collateral proceedings. Thus objections to the proceedings to change the name cannot be made by a subscriber to the capital stock, in an action by the company to recover the amount of his subscriptions.⁹ Where the statute provides for a change on petition to the court, notice of the hearing is usually provided for, and objections may be filed by any person who can show a good reason against such change of name.¹⁰

§ 915. Judicial Proceedings for Change of Name.—In most states are found statutory provisions for the institution of judicial proceedings for the purpose of having changed the names of both individuals and corporations. Essentially the same proceedings are had in both cases, the differences being only such as are made necessary by the action of the directors of the corporation and the prevention of the assumption by a corporation of a name too closely resembling that of another corporation in the state. Any corporation may, by petition, apply to the court of the county in which its articles of incorporation were originally filed, or in which the property of such incorporation is situated, for a change

⁶ *Pilsen Brewing Co. v. Wallace*, 291 Ill. 59, 125 N. E. 714, 8 A. L. R. 579; *Richards v. Minnesota Sav. Bank*, 75 Minn. 196, 77 N. W. 822; *Robinson v. First Nat. Bank*, 98 Tex. 184, 82 S. W. 505.

⁷ *Cincinnati Cooperage Co. v. Bate*, 96 Ky. 356, 49 A. S. R. 300, 26 S. W. 538.

⁸ *Pacific Bank v. De Ro*, 37 Cal. 538; *Phinney v. Shephard & Enoch Pratt Hospital*, 88 Md. 633, 42 Atl. 58.

⁹ *Greenville, etc., Narrow Gauge R. Co. v. Johnson*, 8 Baxt. (Tenn.) 332.

¹⁰ *In re La Societe Francaise, etc.*, 123 Cal. 525, 56 Pac. 458, 787; *In re Los Angeles Trust Co.*, 158 Cal. 603, 112 Pac. 56; *Matter of U. S. Mortgage Co.*, 83 Hun 572, 32 N. Y. Supp. 11.

of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name.¹¹

§ 916. Name Which May Be Chosen.—A corporation will not be permitted to change its name to a name identical with that of another corporation in the same place, or so similar thereto as to give rise to confusion of the two names or as in any manner to deprive the other of the benefit of the prestige or good will which attaches to an established name.¹² There is no general rule by which to measure the degree of similarity to be allowed in the names of two corporations. The question simply addresses itself to the good sense and sound judgment of the court whether, in the particular case the proposed new name so nearly resembles that of the other corporation that its assumption and use would be likely to prejudice the rights and interests of the other corporation.¹³

The question whether the change shall be allowed is a matter within the discretion of the court to which the petition is presented, and its decision will not be interfered with unless there is a gross abuse of discretion.¹⁴ The applicant must sometimes file in court at the time of hearing the application, the certificate of the secretary of state that the name desired to be used by the applicant is not the corporate name of any corporation existing at said time, and that said name does not so closely resemble the name of any such existing corporation as will tend to deceive. Such certificate may be as follows:

¹¹ California Code of Civil Procedure, secs. 1207 et seq.; Montana Rev. Codes, 1921, secs. 9963 et seq. See, also, statutory provisions of other states.

¹² *Clarke v. Milligan*, 58 Minn. 413, 59 N. W. 955; *Matter of United States Mortgage Co.*, 83 Hun 572, 32 N. Y. Supp. 11.

¹³ *Matter of Attica Bank*, 59 Hun 615, Mem. 35 N. Y. 708.

¹⁴ *In re United States Mercantile Reporting, etc.*, Agency, 115 N. Y. 176, 21 N. E. 1034.

§ 917. Certificate of Secretary of State on Application to Change Name.

CERTIFICATE OF PERMISSION TO CHANGE NAME.

State of California, Department of State.

I, Frank C. Jordan, do hereby certify that the name "Nippon Savings & Commercial Bank," the name desired to be used by "Nippon Savings Bank," in its application for a change of its name, is not the corporate name of any corporation now existing, and that said name does not so closely resemble the name of any such existing corporation, other than that of the applicant, as will tend to deceive.

In Witness Whereof, I have hereunto set my hand and great seal of state, at my office in Sacramento, California, the 7th day of June, A. D. 1927.

FRANK C. JORDAN,

Secretary of State.

By FRANK H. CORY, Deputy.

§ 918. Resolution by Board of Directors.—The board of directors should first pass a resolution in the following form:

RESOLUTION OF DIRECTORS TO HAVE NAME CHANGED.

On motion, duly made, seconded and carried, the following preambles and resolutions were adopted:

Whereas, This corporation is desirous of carrying on a commercial banking, as well as a savings banking business, and by its articles of incorporation, is duly authorized thereunto; and

Whereas, The name Nippon Savings & Commercial Bank would more exactly indicate the character of its business, and be to the advantage and benefit of the corporation;

Now, Therefore, Be It Resolved, That proceedings be instituted and carried to completion by which the name of this corporation, Nippon Savings Bank, may be changed to the name of Nippon Savings & Commercial Bank;

Be It Further Resolved, That the president of the corporation be, and he is hereby empowered and directed to employ attorneys for that purpose, and to pay the necessary charges and expenses therefor.

§ 919. Resolution by Stockholders. — Where a resolution of the stockholders is necessary for the change of the corporate name the resolution may be in the following form:

RESOLUTION OF STOCKHOLDERS TO HAVE NAME CHANGED.

On motion, duly made; seconded and carried, the following preamble and resolution were adopted:

Whereas, it is the desire of all of the stockholders to change the name of this corporation to the Company,

Now, Therefore, Be It Resolved, That said name be changed accordingly and the steps be immediately taken to effect such change in a legal matter by application to the superior court of county, according to the law applicable to such matters.

§ 920. Petition for Change of Name.—The petition may be in the following form:

PETITION FOR CHANGE OF NAME.

In the Superior Court of the County of Sacramento,
State of California.

In the matter of the application of Nippon Savings Bank, a corporation, for a change of its name.

Now comes the Nippon Savings Bank, a corporation, and by a majority of its board of directors, duly authorized thereto, respectfully shows to your honorable court:

I.

That said Nippon Savings Bank, is a corporation duly organized and existing under the laws of the state of California; that it was organized under said laws on the 19th day of September, A. D. 1921, for the purpose of engaging in a general banking business; and since the said date it has been, and is now, engaged in carrying on said business in the city of Sacramento, county of Sacramento, state of California; that its principal place of business is located at No. 1203 Third Street, in said city, county and state; that its present board of directors is composed of five (5) members, and their names are as follows:

A. K. Matsusaki, H. Kishi, R. Murakami, S. Sami, S. Yoshida.

II.

That it was organized under the name of Nippon Savings Bank, and since, hitherto, that has been, and now is, its present name.

III.

That it is now proposed by said corporation that its name be changed from its present name of Nippon Savings Bank to the name of Nippon Savings & Commercial Bank.

IV.

That the reason for said change of name, and why your petitioners propose the same, is as follows:

(1) That the name Nippon Savings Bank has been found to suggest to those unacquainted with its business, and the scope thereof, the idea that it is devoted solely and exclusively to a savings bank business, and to suggest the idea that it is not carrying on a general banking business.

(2) That the purposes for which said bank was organized were to carry on a general banking business, including all the ordinary transactions of savings and commercial banks, and the proposed name, Nippon Savings & Commercial Bank, contains the suggestion that such are the purposes of

the corporation, and indicates to those unacquainted with its business more exactly the scope of said business.

(3) That in the opinion of your petitioners the proposed name has none of the objections, and will not encounter any of the objections that have heretofore appeared with respect to the present name of said corporation, and that the proposed name will be more advantageous and beneficial to the said corporation and its stockholders than the name it bears at present.

V.

That the name Nippon Savings and Commercial Bank, is not the corporate name of any corporation now existing, and that said name does not so closely resemble the name of any such existing corporation as will tend to deceive.

VI.

That at a special meeting of the board of directors of said corporation, Nippon Savings Bank, duly and regularly called and held on the 15th day of June, 1927, by resolution duly adopted and entered in the journal of its proceedings, it was resolved that these proceedings be inaugurated for the purpose of securing the change of name.

Wherefore, Your petitioners pray that your honorable court appoint a time for the hearing of this application; and that in your order appointing said time, you designate a newspaper in which publication of this notice may be had for a period of four (4) weeks, prior to said day of hearing;

And that upon the said hearing your honorable court make an order changing the name of said corporation, Nippon Savings Bank, to that of Nippon Savings & Commercial Bank.

A. K. MATSUSAKI,
H. KISHI,
R. MURAKAMI,
S. SAMI,
S. YOSHIDA,

Directors of Nippon Savings Bank, a corporation.

§ 921. Order to Show Cause on Change of Name.

In the matter of the application of Nippon Savings Bank, a corporation, for a change of its name.

Nippon Savings Bank, a corporation, and A. K. Matsusaki, H. Kishi, R. Murakami, S. Yoshida and S. Sami, a majority of the directors thereof, having presented and filed therein their petition and application praying that the name of said Nippon Savings Bank be changed to Nippon Savings & Commercial Bank, which petition was signed by a majority of the board of directors of the said Nippon Savings Bank;

It is hereby ordered, that all persons interested in said matter appear before the superior court of the county of Sacramento, state of California, department No. 3, at the county courthouse, in the city of Sacramento, county of Sacramento, state of California, on the 7th day of August, 1927, at the hour of 1:30 o'clock p. m. of that day, or as soon thereafter as

counsel can be heard, to show cause why said application for change of name should not be granted;

And it is further ordered that notice of said application and of this order be given by publication in *The Sunday News*, a newspaper of general circulation, printed and published in the city of Sacramento, county of Sacramento, state of California, once a week for four (4) successive weeks.

Dated June 17th, 1927.

C. N. POST,

Judge of the Superior Court.

§ 922. Objections to Change of Name.

In the matter of the application of Nippon Savings Bank, a corporation, for a change of its name.

Now come W. E. Hardenburg and Clifford Stone, and objecting to the proposed change of the name of the Nippon Savings Bank to the Nippon Savings & Commercial Bank, and for reasons why such name should not be changed, state the facts to be that—(state facts in full).

Wherefore we request the court to deny said petition.

W. E. HARDENBURG.

CLIFFORD STONE.

§ 923. Decree of Change of Name.—The decree of the court changing the name may be as follows:

DECREE OF CHANGE OF NAME.

In the Superior Court of the State of California, in and for the County of Sacramento.

In the matter of the application of the Nippon Savings Bank (a corporation) for a change of its name.

This matter having come on regularly for hearing before Honorable C. N. Post, judge of the superior court, in open court this day, the petitioner herein appearing by its attorneys, Hillyer, Stringham & O'Brien, and no remonstrance appearing, and both oral and documentary evidence being introduced and it appearing therefrom to the court that the petition in this matter was regularly filed according to law and that the publication of said petition and order was duly made according to law, and that the certificate of the secretary of state was duly obtained and filed herein according to law, and that the matters set forth in said petition are in fact true; and it further appearing to the court that there is good reason for the change of name prayed for as set forth in the petition and that there are no valid objections to such change of name, and the court having considered the petition herein and the testimony both oral and documentary; now therefore,

It is ordered, adjudged and decreed that the name of the Nippon Savings Bank, a corporation organized and existing under the laws of the state of

California, be and the same is hereby changed to the name of the Nippon Savings & Commercial Bank.

C. N. POST,

Dated August 7, 1927.

Judge of the Superior Court.

§ 924. Filing of Decree Changing Name.—A certified copy of the decree of the court, changing the name of a corporation, should, within the statutory period, be filed in the office of the secretary of state, and in the office of the county clerk of each county in which the original articles or certified copies thereof are required by law to be filed.¹⁵

§ 925. Certificate to Decree of Change of Name.

State of California, County of Sacramento, ss.

I, Wm. B. Hamilton, county clerk and ex-officio clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of the original order for change of name of Nippon Savings Bank, on file in my office and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the superior court, this 7th day of August, 1927.

WM. B. HAMILTON,

County Clerk.

(Seal.)

By E. F. PFUND, Deputy Clerk.

§ 926. Certificate of Change of Corporate Name.

The Lifetime Realty Company, a corporation, organized and existing under the laws of the state of, by its president and secretary, does hereby certify:

That it has changed its name to the Lifetime Investment Company; that the said name has been declared by resolution of the board of directors of said corporation to be advisable and has been duly and regularly assented to by a vote of two-thirds in interest of the stockholders at a meeting duly called by the board of directors for that purpose.

That the following is a full and true copy of the written assent of the stockholders to the change of name:

"Stockholders Assent to Change of Name.

"We, the subscribers, having at least two-thirds in interest of the stock of the Lifetime Realty Company have, at a meeting regularly called for that purpose, voted in favor of changing the name of said corporation to

¹⁵ California Code of Civil Procedure, sec. 1279; Civil Code, sec. 300a. See, also, statutory provisions of other states.

the Lifetime Investment Company and do now, pursuant to the statute, hereby give our written assent to said change.

"In Witness Whereof, We have hereunto set our hands and seals this 9th day of May, 1927.

"W. E. HARDENBURG, 1000 shares.

"JOHN JONES, 500 shares.

"RICHARD BROWN, 250 shares.

"FRANK SMITH, 250 shares."

In Witness Whereof, The said corporation has caused this certificate to be signed by its president and secretary and its corporate seal to be hereunto affixed this 16th day of May, 1927.

(Seal.)

LIFETIME INVESTMENT COMPANY.

By W. E. HARDENBURG,

President.

Attest:

JOHN JONES,
Secretary.

State of, County of, ss.

On this 16th day of May, 1927, before me appeared W. E. Hardenburg and John Jones, president and secretary of the Lifetime Realty Company, each to me personally known, who being by me severally and duly sworn, each for himself, and not one for the other, did say, that W. E. Hardenburg is such president, and John Jones is such secretary respectively of said above named corporation, mentioned in and which executed the foregoing certificate.

Subscribed and sworn to before me this 16th day of May, 1927.

Notary Public in and for the County of,
State of

§ 926a. Certificate of Change of Corporate Name. [Another Form.]

We, the undersigned, president and secretary of the Lifetime Realty Company, a corporation organized and existing under the general laws of the state of, and having its principal place of business at, in the county of, in said state, hereby certify:

That a meeting of the stockholders of said corporation duly called for that purpose and held at, in the county of, in said state on the 7th day of May, 1927, it was voted by the holders of two-thirds of its outstanding stock to amend its articles of incorporation, by changing the name of said corporation from Lifetime Realty Company to Lifetime Investment Company.

Dated at :....., in the county of, this 16th day of May, 1927.

.....
President.

.....
Secretary.

State of, County of, ss.

At, in said county, this 16th day of May, 1927, personally appeared the above named W. E. Hardenburg, president, and John Jones, secretary, of the corporation above named, and made oath to the truth of the foregoing certificate by them subscribed.

.....
Subscribed and sworn to before me this 16th day of May, 1927.

THOMAS MILLS,
Notary Public in and for the County of,
State of

§ 926b. Affidavit as to Change of Corporate Name.

State of, County of, ss.

We, W. E. Hardenburg and John Jones, president and secretary respectively of the Lifetime Realty Company, state on oath that at a regular meeting of the stockholders of said company called by the president thereof, for the purpose of considering a resolution for the change of the name of said corporation, notice of which meeting was waived in writing, signed by all of the said stockholders, held upon the 7th day of May, 1927, at the office of said corporation in the city of, county of, state of, the following resolution was adopted:

(Set out resolution.)

In Testimony, We have hereunto set our hands, as president and secretary respectively of the said company, and affixed hereto its corporate seal, on this the 10th day of May, 1927.

(Seal.)

W. E. HARDENBURG,
President,
JOHN JONES,
Secretary.

§ 926c. Effect of Change of Corporate Name.—The change in the name of a corporation has no more effect upon its identity as a corporation than a change of name of a natural person has upon his identity. It does not affect the rights of the corporation or lessen or add to its obligation.¹⁰ The fact that the corporation by its

¹⁰ Metropolitan Nat. Bank v. Clagett, 141 U. S. 520, 12 S. Ct. 60, 35 L. Ed. 841; Lomb v. Pioneer Savings, etc., Co., 106 Ala. 591, 17 So. 670; Wilhite v.

old name makes a formal transfer of its property to the corporation by its new name does not of itself show that the change in name has effected a change in the identity of the corporation.¹⁷ A mere change in the name of a corporation does not relieve a subscriber to stock in the corporation from liability to pay his subscription.¹⁸ Actions brought by a corporation after it has changed its name should be brought under the new name, although for the enforcement of rights existing at the time the change was made.¹⁹ The change in the name of the corporation does not affect its right to bring an action on a note given to the corporation under its former name.²⁰ If an action is begun against a corporation under its old name it is proper for the court to order the action to proceed against the corporation under its new name, as the change in name is not a change of parties.¹ If an attempt is made to change the name of a corporation after a suit is begun, the fact that the change may not be legally effected will have no effect on the judgment, as the corporation itself is not affected.²

Convent of Good Shepherd, 117 Ky. 251, 78 S. W. 138; *Carlon v. City Savings Bank*, 82 Neb. 582, 118 N. W. 334.

¹⁷ *Palfrey v. Association for Relief*, 110 La. 452, 34 So. 600.

¹⁸ *Howard v. Glenn*, 85 Ga. 238, 11 S. E. 610, 21 A. S. R. 156.

¹⁹ *Lomb v. Pioneer Savings, etc., Co.*, 106 Ala. 591, 17 So. 670.

²⁰ *Cumberland College v. Ish*, 22 Cal. 641.

¹ *North Birmingham Lumber Co. v. Sims*, 157 Ala. 595, 48 So. 84.

² *O'Donnell v. C. R. Johns & Co.*, 76 Tex. 362, 13 S. W. 376.

CHAPTER LIII.

CHANGE OF PRINCIPAL PLACE OF BUSINESS.

- § 927. Power to Change Place of Business.
- § 928. Resolution of Directors Changing Place of Business.
- § 929. Consent to Change of Place of Business to Other Community.
- § 930. Consent of Stockholders to Change Place of Business.
- § 931. Notice of Intended Change of Principal Place of Business.
- § 932. Affidavit of Publication of Notice.
- § 933. Certificate to Be Filed on Change of Place of Business.
- § 934. Certificate of Change of Place of Business.
- § 935. Certificate of Change of Place of Business. [Another Form.]

§ 927. Power to Change Place of Business.—It is generally provided by statute that every corporation that has been or may be created under the general laws of a state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within the state.¹ No particular formality is necessary in the case of any such removal from one location to another in the same city, town, or village. The directors may make such a removal at any time by mere resolution.²

§ 928. Resolution of Directors Changing Place of Business.

On motion, duly made, seconded and carried, the following preamble and resolution were adopted:

Whereas, The owners and holders of more than two-thirds ($\frac{2}{3}$) of the issued capital stock of this corporation, Pure Blood Hog Association, organized and existing under the laws of the state of, and having its principal place of business at, in the county of, state of, to wit: The owners and holders of shares of the issued capital stock of this corporation, have consented in writing, and authorized, empowered and directed this board of directors and officers of this corporation to change and remove the principal place of business of this corporation from its present location, to wit,, in the county of, state of, to county, state of, which consent was filed and is now on file in the office of this company.

¹ California Civil Code, sec. 321a; Idaho Comp. Stats. 1919, sec. 4727. See, also, statutory provisions of other states.

² California Civil Code, sec. 321a; Seal of Gold Min. Co. v. Slater, 161 Cal. 621, 120 Pac. 15.

Now, Therefore, Be It Resolved, That the principal place of business of this corporation, to wit,, in the county of, state of, be, and the same is hereby changed and removed therefrom to county, state of, such removal and change to take effect on the 29th day of September, A. D. 1927.

And that the secretary of this corporation be, and he is hereby authorized, empowered and directed to cause a notice of the intended removal and change of the principal place of business of this corporation to be published, at least once a week for three (3) successive weeks in the, a newspaper of general circulation published in the county of, state of, wherein the present principal place of business of this corporation is situated;

And that whenever such change be made said secretary is hereby directed to file in each office where the original articles of incorporation are, or any copy thereof is required to be filed, a copy of this resolution, together with a copy of the affidavit showing the publication above directed to be made, all duly certified by the president and secretary of this corporation, and with the corporate seal affixed;

And that the president and secretary of this corporation be, and they are hereby authorized, empowered and directed, acting jointly or either acting alone, to do any and all other acts or things requisite or necessary in their judgment to fully and completely effect the change and removal of the principal place of business of this corporation, as above provided, in accordance with the laws of the state of relating thereto.

§ 929. Consent to Change of Place of Business to Other Community.—Where, however, it is desired to change the principal place of business from one town to another, before such change is made the consent in writing of the holders of two thirds of the capital stock of the corporation must be obtained and filed in its office; or if the corporation have no capital stock, then the consent in writing of two-thirds of the members thereof must be obtained and filed in its office.³

§ 930. Consent of Stockholders to Change Place of Business.

Know All Men by These Presents:

That we, the undersigned, owners and holders of more than two-thirds ($\frac{2}{3}$) of the issued capital stock of the Pure Blood Hog Association (organized and existing under the laws of the state of California, and having its principal place of business at, in the county of, state of,), to wit: The owners and holders of shares of the capital stock of this corporation do hereby consent in writing, and authorize, empower and direct the board of directors and officers of this

³ California Civil Code, sec. 321a.

corporation, to change and remove the principal place of business of this corporation from its present place of business, to wit,, in the county of, state of, to county,

Dated at, this 1st day of September, 1927.

....., owning and holding shares
 , owning and holding shares
 , owning and holding shares

§ 931. Notice of Intended Change of Principal Place of Business.—When consent in writing of the holders of two-thirds of the capital stock, or if the corporation have no capital stock, two-thirds of the members thereof, is obtained and filed, notice of the intended removal or change must be published, at least once a week, for three successive weeks, in some newspaper published in the county, wherein said principal place of business is situated, if there be one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated and that to which it is intended to remove it.⁴ Notice of such intended change may be in the following form:

Pursuant to the written consent of the holders of more than two-thirds ($\frac{2}{3}$) of the issued capital stock of the Pure Blood Hog Association, duly organized and existing under the laws of the state of, which consent has been duly filed in the office of said corporation in the county of, state of, on the 1st day of September, 1927, and pursuant to a resolution of the board of directors of said corporation, which resolution was duly passed at a special meeting of said board of directors duly called and held at the office of said corporation, on the 1st day of September, 1927, at which meeting more than a quorum of the directors of said corporation was present.

Notice is hereby given that the principal place of business of said corporation will, on the 29th day of September, 1927, be changed and removed from the county of, state of, to county, state of, after which date the principal place of business of said corporation will be the said county, state of

This notice is published by order of the board of directors of said Pure Blood Hog Association.

Dated, the 1st day of September, A. D. 1927.

.....
 Secretary of Pure Blood Hog Association.

⁴ California Civil Code, sec. 321a; Chapman v. Doray, 89 Cal. 52, 26 Pac. 605.

§ 932. Affidavit of Publication of Notice.

In the matter of the change of the principal place of business of the Pure Blood Hog Association from San Diego to Los Angeles, Cal. State of California, County of San Diego, ss.

Henry Twelker of the said county and state, having been first duly sworn, deposes and says:

That he is, and at all times embraced in the publication herein mentioned was, the principal clerk of the printers and publishers of the Evening Express, a newspaper of general circulation, printed and published daily (Sundays excepted) in said county.

That deponent, as such clerk, during all times mentioned in this affidavit has had, and still has, charge of all the advertisements in said newspaper; and

That a notice of which the annexed is a printed copy, has been published in the above named newspaper on the following dates, to wit,; being as often as said newspaper was published during said period; and further deponent saith not.

HENRY TWELKER.

Subscribed and sworn to before me this 25th day of September, 1927.

L. A. TRENT,

Notary Public in and for the County of San Diego,
State of California.

§ 933. Certificate to Be Filed on Change of Place of Business.—Whenever a change in the place of business is made, a copy of the resolution or action of the board of directors authorizing the same together with a copy of an affidavit of the publication above required, all duly certified by the president and secretary of the corporation with the corporate seal affixed shall be filed in each office where the original articles of incorporation are, or any copy thereof is required to be filed.⁵

§ 934. Certificate of Change of Place of Business.

We, the president and secretary, respectively, of Pure Blood Hog Association, a corporation duly organized and existing under the laws of the state of California, do hereby certify and declare:

That the annexed resolution removing and changing the principal place of business of said corporation from San Diego, in said state, at room 493 Scripps Building therein, to Los Angeles, in said state, at No. 1107 Bank of Italy Building therein, is a full, true and correct copy of a resolution,

⁵ California Civil Code, sec. 321a. See, also, statutory provisions of other states.

marked "Exhibit A," duly passed and adopted at a special meeting of the board of directors of said company, held at its said place of business in the city of San Diego, on Friday, the 24th day of September, 1927, of which said meeting all directors of said corporation had due and legal notice and a majority and quorum of said board were present at said meeting and unanimously voted in favor of the adoption of said resolution; and

That the annexed affidavit, marked "Exhibit B," showing publication of the notice of the removal and change of the principal place of business of said corporation is a full, true and correct copy of the affidavit showing such publication as therein set forth, and that the original thereof is on file in the office of said company.

In Witness Whereof, We, the president and secretary respectively of said company, have hereunto signed our names as such and affixed the corporate seal of said company this 24th day of September, 1927.

(Seal.)

W. E. HARDENBURG, President.

JERAULD THOMPSON, Secretary.

State of California, County of San Diego, ss.

On this, the 24th day of September, 1927, before me, L. A. Trent, a notary public in and for said county of San Diego, state of California, residing therein, duly commissioned and sworn, personally appeared W. E. Hardenburg, known to me to be the president, and Jerauld Thompson, known to me to be the secretary of the Pure Blood Hog Association, the corporation described in the within instrument, and they severally acknowledged that they executed such instrument as president and secretary respectively of said company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the county of San Diego, the day and year in this certificate first above written.

(Seal.)

L. A. TRENT,

Notary Public in and for the County of San Diego,
State of California.

My commission expires December 31st, 1927.

§ 935. Certificate of Change of Place of Business. [Another Form.]

We, the undersigned, a majority of the directors of The Hartford Automobile Company, a corporation organized under the Statute Laws of the state of Connecticut, and located in the town of Hartford in said state,

Hereby Certify, That at a meeting of the stockholders of said corporation duly called for that purpose, and held at room 498 Commonwealth Building, in the city of Hartford, state of Connecticut, on the 30th day of September, 1926, the location of said corporation was changed from the town of Hartford aforesaid to the town of Danbury, in said state, by a vote of (more

than) two-thirds of all the outstanding stock of each class, of which resolution the following is a copy: (Here insert copy of resolution.)

Dated at Hartford this 30th day of September, 1927.

EDWARD NEWCOMB.

FRANK JENNINGS.

J. S. STEWART.

State of Connecticut, County of Hartford, ss.

Personally appeared Edward Newcomb, Frank Jennings and J. S. Stewart, being a majority of the directors of The Hartford Automobile Company, and made oath to the truth of the foregoing certificate by them signed, before me.

WILLIAM JONES,

Notary Public.

Justice of the Peace.

Dated at Hartford this 30th day of September, 1927.

CHAPTER LIV.

CONSOLIDATION OF CORPORATIONS.

- § 936. In General.
- § 937. Powers of Corporations to Consolidate.
- § 938. Each Constituent Corporation Must Have Power to Consolidate.
- § 939. Consent of Stockholders to Consolidation.
- § 940. Methods of Consolidation.
- § 941. Consolidation of Corporations Organized for Profit.
- § 942. Agreement of Merger and Consolidation.
- § 943. Secretary's Certificate Relative to Vote of Stockholders.
- § 944. Consolidation Agreement.
- § 945. Option to a Promoter of a Consolidation.
- § 946. Consolidation of Railroads.
- § 947. Ratification by Stockholders.
- § 948. Incorporation and Consolidation.
- § 949. Articles of Consolidation and Incorporation.
- § 950. Published Notice After Consolidation.
- § 951. Consolidated Corporation Takes Powers of Constituent Corporations.
- § 952. Debts and Liabilities of Constituent Corporations.
- § 953. Status of Companies After Consolidation.

§ 936. **In General.**—The meaning to be attached to the term “consolidation,” as used in a law authorizing the consolidation of two or more corporations, is uncertain.¹ It depends not often upon the particular terms of the act giving the power, and the legal effect resulting from consolidation will largely depend upon the character of the consolidation authorized by the permission, as well as upon the contract actually entered into by the consolidating companies. Generally, the merging of the company into a new and distinct corporation is contemplated and is the legal result. Not infrequently, the absorption of one company by the other is the consequence of consolidation.² Thus the words “consolidate” and “consolidation” with respect of the union or combination of railroads—for example, as used in the statutes—have not such a recognized judicial construction as to import that the consolidating companies are dissolved and merged into a new one, but

¹ *Tod v. Kentucky Union Land Co.*, 57 Fed. 47.

² *Atlantic, etc., R. R. Co. v. Georgia*, 98 U. S. 362, 363; *Wabash, etc., Ry. Co. v. Ham*, 114 U. S. 587, 595, 5 S. Ct. 1081, 29 L. Ed. 235, 238.

they apply equally to a union where one constituent continues under a new name with enlarged powers, while the others are absorbed by it.³

Most frequently confused with a consolidation of two or more corporations is a "merger." Rightly understood, there never can be a consolidation of corporations except where all the constituent companies cease to exist as separate corporations and a new corporation, to wit, the consolidated corporation, comes into being. A merger, rightly understood, is not the equivalent of consolidation at all, but exists where one of the constituent companies remains in being, absorbing or merging in itself all the other constituent corporations.⁴

§ 937. Powers of Corporations to Consolidate.—In the absence of legislative authority corporations have no power to consolidate with other corporations.⁵ Not only is the consent of the state essential to a valid consolidation, but it must be clearly and distinctly expressed; it is never implied.⁶ Thus the power to consolidate with another railroad line cannot be inferred from authority "to unite or connect with" such road. This refers to a physical union only, a mechanical connection of the tracks of the two companies. Nor is such power conferred by authority to purchase and hold any road constructed by another company, or to agree on terms of receiving the cars of other roads.⁷

§ 938. Each Constituent Corporation Must Have Power to Consolidate.—Each of the constituent corporations must have the power to consolidate; it being insufficient that one or more of the consolidated companies have the necessary legislative authority.

³ Meyer v. Johnston, 64 Ala. 603.

⁴ Vicksburg, etc., Telephone Co. v. Citizens' Telephone Co., 79 Miss. 341, 30 So. 725, 89 A. S. R. 656.

⁵ Louisville, etc., R. Co. v. Kentucky, 161 U. S. 677, 16 S. Ct. 714, 40 L. Ed. 849; Southern R. Co. v. Mitchell, 139 Ala. 629, 37 So. 85; Market Street R. Co. v. Hellman, 109 Cal. 571, 42 Pac. 225; Chicago Title, etc., Co. v. Doyle, 259 Ill. 489, 102 N. E. 790, 47 L. R. A. (N. S.) 1066; State Treasurer v. Auditor-General, 46 Mich. 224, 9 N. W. 258; In re Bergdorf, 206 N. Y. 309, 99 N. E. 714; Overstreet v. Citizens' Bank, 12 Okla. 383, 72 Pac. 379.

⁶ Colgate v. U. S. Leather Co., 75 N. J. Eq. 229, 19 A. C. 1262, 72 Atl. 126.

⁷ Louisville, etc., R. Co. v. Kentucky, 161 U. S. 677, 16 S. Ct. 714, 40 L. Ed. 849.

A contract beyond the corporate powers of one constituent is as invalid as if beyond the corporate powers of both.⁸ However, the naming of one railroad corporation with which another is empowered by statute to consolidate does not preclude a consolidation with others, where the statute continues, "and any transportation company now or hereafter incorporated by the laws of the United States or any of the states thereof," since authority of one corporation to consolidate with another may be found in the provisions of the statute authorizing the latter company to form a consolidation with others, and need not of necessity be inserted in its own charter, or a statute passed with special reference to it.⁹

§ 939. Consent of Stockholders to Consolidation.—Corporations cannot, without the consent of all their stockholders, consolidate with others,¹⁰ except where the power to do so is given by their charters or by a general statute existing at the date of incorporation,¹¹ or in those cases where the right is reserved by constitutional or statutory provisions to the legislature to alter or amend the charter.¹²

There is some conflict of authority as to the power of the legislature to so amend the statute as to authorize corporations, without the consent of all the stockholders, to consolidate, but the weight of authority is clearly in favor of the position that it may do so, and that the legislature, corporation, and majority are not subject to the will of dissenting stockholders.¹³ A stockholder who withholds his consent to a corporate consolidation which he desires to prevent must act diligently. If he sleep on his rights, they will

⁸ *St. Louis V. & T. H. R. Co. v. Terre Haute, etc., Co.*, 145 U. S. 393, 36 L. Ed. 748, 12 S. Ct. 953; *Spencer v. Seaboard Air Line R. Co.*, 137 N. C. 107, 49 S. E. 96, 1 L. R. A. (N. S.) 604; *Overstreet v. Citizens' Bank*, 12 Okla. 383, 72 Pac. 379.

⁹ *Spencer v. Seaboard Air Line R. Co.*, 137 N. C. 107, 49 S. E. 96, 1 L. R. A. (N. S.) 604.

¹⁰ *Tompkins v. Compton*, 93 Ga. 520, 31 S. E. 79; *Colgate v. United States Leather Co.*, 75 N. J. Eq. 229, 72 Atl. 126, 19 A. C. 1262.

¹¹ *Wilson v. Salamanca Tp.*, 99 U. S. 499, 25 L. Ed. 330; *Mayfield v. Alton R., etc., Co.*, 198 Ill. 528, 65 N. E. 100.

¹² *Hale v. Cheshire R. Co.*, 161 Mass. 443, 37 N. E. 307.

¹³ *Market Street Ry. Co. v. Hellman*, 109 Cal. 571; 42 Pac. 225; *Bishop v. Brainerd*, 28 Conn. 289; *Buffalo, etc., R. R. Co. v. Dudley*, 14 N. Y. 336.

be lost. Laches will bar relief.¹⁴ Again, though not actually consenting to a consolidation, a stockholder may estop himself from questioning its validity, as where he accepts stock issued in performance of an agreement of consolidation, and raises no objection for several years.¹⁵

A threatened wrongful consolidation may be enjoined at the suit of a dissenting stockholder in those cases in which the unanimous consent of stockholders is required.¹⁶

§ 940. Methods of Consolidation.—In the absence of statutory authority, the only means by which a consolidation of the interests of two or more corporations may be effected is through the dissolution of some or all of them, and a transfer of their interests to one of them or to a new corporation formed for the purpose. In some states there are no statutory provisions on the subject. In others a consolidation of any two or more corporations may be effected by publication of notice and the filing of new articles with the consent of holders of two-thirds of the stock of each corporation. Still in other states there are no statutes detailing the procedure for the consolidation of all kinds of corporations. Separate methods are provided for consolidating non-profit corporations, educational corporations, co-operative business corporations, mining corporations, building and loan associations, railroad corporations, and all corporations organized for purposes other than profit. Where, therefore, in such states, the particular corporations do not fall in one of the classes permitted to consolidate by statute, resort must be had, as just suggested, to a dissolution of one of the corporations and a transfer of the property to some one corporation. If it be desired to retain the name of one of the corporations, and its purposes as set forth in its articles are broad enough to embrace those for which the other corporations were organized, all of the corporations except this one may dissolve. If, however, a change of name be desired or a broader declaration of purposes made necessary the statutory procedure for a change of name, or

¹⁴ *Alexander v. Searcy*, 81 Ga. 536, 8 S. E. 630; *Rabe v. Dunlap*, 51 N. J. Eq. 40, 25 Atl. 955.

¹⁵ *Branch v. Jesup*, 106 U. S. 468, 27 L. Ed. 279, 1 S. Ct. 495.

¹⁶ *Botts v. Simpsonville, etc., Turnpike Road Co.*, 88 Ky. 54, 10 S. W. 134, 10 Ky. Law, 669, 2 L. R. A. 594; *Colgate v. United States Leather Co.*, 75 N. J. Eq. 229, 72 Atl. 126, 19 A. C. 1262.

that for amending the articles may be invoked, or a new corporation may be organized to take over the interests of all of the corporations which it is desired to consolidate.¹⁷

§ 941. Consolidation of Corporations Organized for Profit.

—In most states, corporations for profit may consolidate upon such terms as may be agreed upon by their respective boards of directors. An agreement such as the following is usually drawn up between the corporations proposing the consolidation:

§ 942. Agreement of Merger and Consolidation.

Agreement, made and entered into as of this day of, 192..., by and between, a corporation of the state of New Jersey, and the directors thereof, parties of the first part;, a corporation of the state of New Jersey, and the directors thereof, parties of the second part, and, a corporation of the state of New Jersey, and the directors thereof, parties of the third part.

Whereas, The principal and registered office of the in the state of New Jersey, is at, N. J., and is the agent therein, in charge thereof, and upon whom process against said corporation may be served within said state; and

Whereas, The principal and registered office of the in the state of New Jersey, is at, in the city of, county of, and is the agent therein, in charge thereof, and upon whom process against said corporation may be served within said state; and

Whereas, The principal and registered office of the in the state of New Jersey, is at No., city of, county of, state of New Jersey, and is the designated agent therein, in charge thereof, and upon whom process against said corporation may be served within said state; and

Whereas, The under the certificate of incorporation of said company filed in the office of the secretary of state of New Jersey, on or about the day of, 192..., and recorded in the office of the clerk of the county of, on the, has an authorized capital stock of dollars (\$.....), divided into shares of the par value of dollars (\$.....), each, all of which are common stock; and there have been duly issued and are now outstanding certificates for shares of said common stock; and

Whereas, under the certificate of incorporation of said company filed and recorded in the office of the secretary of the state of New Jersey, on, 192..., and recorded in the office of the clerk of County, New Jersey, on, 192..., has an authorized capital stock

¹⁷ See statutes of particular state.

of dollars (\$.....), divided into shares of the par value of dollars (\$.....) each, all of which are common stock; and there have been duly issued and are now outstanding certificates for shares of said common stock; and

Whereas, under the certificate of incorporation of said company filed and recorded in the office of the secretary of the state of New Jersey on, 192..., and recorded in the office of the clerk of County, New Jersey, on, 192..., has an authorized capital stock of dollars (\$.....), divided into shares of the par value of dollars (\$.....) each, all of which are common stock; and there have been duly issued and are now outstanding certificates for shares of said common stock; and

Whereas, The above mentioned corporations are organized for the purpose of carrying on business of the same or of a similar nature; and

Whereas, The respective board of directors of said corporations deem it advisable, to the end that greater efficiency and economy of management may be accomplished and otherwise and generally to the advantage and welfare of said corporations and their several and respective stockholders, to merge and consolidate said corporations under and pursuant to the provisions of an act of the legislature of the state of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and all acts supplemental thereto or amendatory thereof.

Now, Therefore, In consideration of the premises and the mutual agreements, provisions, covenants and grants herein contained, it is hereby agreed by and between the said parties hereto, and in accordance with said act of the legislature of the state of New Jersey, that said and shall be and the same are hereby merged into and consolidated with said and said does hereby merge into and consolidate with itself and said

And the parties hereto by these presents agree to and prescribe the terms and conditions of said merger and consolidation, and the mode of carrying the same into effect, which terms and conditions and mode of carrying the same into effect, the said parties hereto do mutually and severally agree and covenant to observe, keep and perform, that is to say:

Article I: The name of the consolidated corporation is and shall be and remain, the same being hereafter called the Consolidated Corporation.

Article II: The number, names and places of residence of the first directors of said Consolidated Corporation, who shall hold office until their successors be chosen or appointed according to the by-laws of said corporation, are as follows:

Name of Director.	Residence.
.....
.....
.....

The first officers of said Consolidated Corporation shall be a president,

vice-president, treasurer and secretary; and their names and places of residence are as follows:

Office.	Name.	Residence.
President
Vice-president
Secretary and treasurer....

Article III: The capital stock of said Consolidated Corporation is and shall be dollars (\$.....), divided into shares of the par value of each, all of which are and shall be common stock. The rights, terms, and conditions of the shares of said common stock issued and to be issued shall be the same as those of the shares of the common stock of the present, now outstanding, as set forth in the certificate of incorporation filed in the office of the secretary of state of the state of New Jersey, on or about, 192...

Article IV: The manner of converting the capital stock of the corporations, parties hereto, into the capital stock of the consolidated corporations, shall be as follows:

All the present holders of stock of shall continue to hold the same certificates of stock which they now hold and such certificates shall represent a like number of shares of the common stock of the Consolidated Corporation.

Each and every of the outstanding shares of stock of the and shall be forthwith exchangeable for, and convertible into, the stock of the Consolidated Corporation in the proportion and manner following, namely:

Each holder of one share of stock of, upon the surrender of the certificate therefor, duly endorsed in blank for transfer, at the office of the Consolidated Corporation,, N. J., shall receive one-half share of stock of said Consolidated Corporation, or, at his election, the sum of dollars (\$.....) in cash.

Each holder of one share of stock of, upon the surrender of the certificate therefor, duly endorsed in blank for transfer, at the office of the Consolidated Corporation,, N. J., shall receive of one share of the stock of said Consolidated Corporation, or, at his election, the sum of dollars (\$.....).

Article V: Except in so far as hereinafter otherwise specifically set forth or as provided by statute, the corporate name, franchise, rights and organization of said shall remain intact, and said Consolidated Corporation shall possess the powers, privileges and rights granted by and shall be governed by and be subject to the certificate of incorporation of

The corporation names and organization of, except in so far as the same shall continue by statute or may be requisite for carrying out the purposes of this agreement, shall cease upon the filing in the office of the secretary of state of the state of New Jersey of this agreement, when adopted by the stockholders as hereinafter provided.

Article VI: The by-laws of the said Consolidated Corporation shall be the present by-laws of the said until changed or amended as provided therein.

Article VII: Upon the consummation of the act of merger and consolidation herein provided for, all and singular the rights, privileges, powers and franchises of each of said corporations and all property, real, personal, and mixed, and all debts due on whatever accounts, as well as for stock subscriptions as all other things in action or belonging to each of said corporations, shall be vested in the Consolidated Corporation; and all property, rights privileges, powers and franchises, and all and every other interest of the three corporations, parties hereto, shall hereafter be as effectually the property of the said Consolidated Corporation as they were of the several and respective corporations, parties hereto, and the title to any and all real estate, whether by deed or otherwise vested in any of said corporations, shall not revert or be in any way impaired by reason of the said merger and consolidation, provided that all rights of creditors and all liens upon the property of any and all of said corporations, parties hereto, shall be preserved unimpaired, and the respective corporations, parties hereto, may be deemed to continue in existence in order to preserve the same; and all debts, liabilities and duties of either of said corporations, parties hereto, shall forthwith attach to said Consolidated Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it, it being expressly provided that the merger and consolidation of the corporations, parties hereto, shall not in any manner impair the rights of any creditor or creditors of any of said corporations. If at any time said Consolidated Corporation shall deem or be advised that any further assignments, assurances in the law, or things are necessary or desirable to vest in the said Consolidated Corporation, the title to any property of (as the case may be), and its proper officers and directors shall and will execute all proper assignments and assurances in the law, and do all things necessary or proper to vest title to such property in the said Consolidated Corporation and otherwise to carry out the purposes of this agreement.

It is expressly declared that said Consolidated Corporation shall and said hereby covenants that, as consolidated, it shall be subject to the remedies and liabilities in such case prescribed in the said act entitled "An Act Concerning Corporations (Revision of 1896)" and the said several supplements to and amendments thereof.

Article VIII: The Consolidated Corporation shall pay all expenses of merger and consolidation.

Article IX: The principal and registered office of said Consolidated Corporation in the state of New Jersey is at, in the city of, county of, and the is the agent therein, in charge thereof, upon whom process against the said corporation may be served within said state.

Article X: This agreement shall be submitted to the stockholders of each of the corporations, parties hereto, as provided by law and shall take

effect and be deemed and taken to be the agreement and act of merger and consolidation of said corporations upon the adoption thereof by the votes of the holders of two-thirds of all the shares of the capital stock of each of said corporations and upon the doing of such other acts and things as shall be required by said "Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof.

In Witness Whereof, The said corporations, parties to this agreement, have caused their respective corporate seals to be hereunto affixed and these presents to be signed by their respective presidents or vice-presidents and attested by their respective secretaries or assistant secretaries, all thereunto duly authorized, and the directors of each of said corporations have hereunto set their hands and seals as of the day and year first above mentioned.

(Corporate Seal.)

Attest:

.....

Secretary.

Directors:

.....
.....
.....

By.....

President.

(Corporate Seal.)

Attest:

.....

Secretary.

Directors:

.....
.....
.....

By.....

President.

(Corporate Seal.)

Attest:

.....

Secretary.

Directors:

.....
.....
.....

§ 943. Secretary's Certificate Relative to Vote of Stockholders.

I,, secretary of, a corporation organized and doing business pursuant to an act of the legislature of the state of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the

several supplements thereto and acts amendatory thereof, do hereby certify in accordance with provision of Section 105 of said act:

1. That the foregoing agreement for merger and consolidation of said company and was made by the directors of said at a duly convened meeting called for that purpose.

2. That said agreement was duly submitted to the stockholders of said at a meeting thereof called for the purpose of taking the same into consideration, of which meeting twenty days' notice of time, place and object thereof was mailed to the last known postoffice address of each of said stockholders.

3. That said agreement was considered by the stockholders at said meeting and a vote of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders owning more than two-thirds of the shares of the capital stock of said voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of the and the said vote by ballot upon the adoption of said agreement, were held and taken separately from the meetings of stockholders and vote of the said

5. That the principal office of the is No., N. J., and is the agent therein, and in charge thereof, upon whom process against said company may be served within said state.

In Witness Whereof, I have hereunto signed my name as
secretary and affixed the seal of said this
..... day of, 192...
192...

(Corporate Seal.)

.....
Secretary.

§ 944. Consolidation Agreement.

Memorandum of Agreement and Articles of Consolidation, Made and entered into the 26th day of January, one thousand nine hundred and twenty-seven (1927) by and between the Jamestown Coal Company, a corporation organized and existing under and by virtue of the laws of the state of Indiana, party of the first part, and the Jones Refrigerating Company, a corporation organized and existing under and by virtue of the laws of the state of Indiana, party of the second part, hereinafter referred to as the Consolidating Companies, witnesseth:

Whereas, Said Consolidating Companies are duly authorized and empowered to consolidate, and by action duly taken by the stockholders of each of the Consolidating Companies, it has been deemed advisable and found to be expedient to consolidate said Consolidating Companies into a single corporation, and that such consolidation be effected;

Now, Therefore, In consideration of the premises, and of the mutual promises, agreements, covenants, and grants hereinafter contained, it is hereby mutually agreed by and between the said Consolidating Companies, in the manner following, to wit:

(1) The Jamestown Coal Company and the Jones Refrigerating Company, consolidating companies aforesaid, are hereby consolidated into a single corporation, under the name of Harmon Industrial Company, hereinafter called the Consolidated Corporation;

(2) The object for which said Consolidated Corporation is formed is the same as the objects of each of said consolidating companies, namely:

To deal at wholesale and retail in coal, coke, wood, and other fuel of all kinds; to mine coal, manufacture coke and engage in the production and manufacture and sale of all articles connected with the business of dealing in coal and other fuel.

To conduct a general jobbing, warehousing, and mercantile business, and to do all things necessary or proper in connection therewith.

To engage in the transaction of a general refrigerating business; the manufacturing of and dealing in wagons, automobiles, tools, machinery, and apparatus.

To manufacture, produce, purchase, acquire, own, possess, use, sell, and otherwise dispose of distilled and other water, and any and all carbonated beverages; and also ice cream and table ices, buttermilk, fermented lactic milk, evaporated and condensed milk, milk powder, and all other kinds of milk product.

To engage in a general business in gravel, sand, bricks, stone, lime, cement, metal, composition, wood, and other substances and materials.

To raise, purchase, acquire, own, possess, use, sell, and otherwise dispose of horses, mules, and other live stock.

To construct, purchase, acquire, own, possess, use, operate, sell, and otherwise dispose of the appliances, facilities, and means for a common storage and cold storage business, and to do and to have done a cold storage, produce, a provisions, and delivery business.

To obtain, purchase, acquire, own, possess, use, sell, and otherwise dispose of letters patent of the United States of America, and of foreign countries, and rights, privileges, and immunities thereunder, covering any new and useful improvement in or relating to, or pertaining to or incidental to any and all of the matters and things herein named or referred to, and any and all parts thereof.

To do and perform any and all other acts and things necessary to be done and performed to obtain the objects and purposes herein expressed and intended.

(3) The amount of capital stock of said Consolidated Corporation is twelve million dollars (\$12,000,000), divided into one hundred and twenty thousand (120,000) shares of the par value of one hundred dollars (\$100) each, of which fifty thousand (50,000) shares amounting to five million dollars (\$5,000,000) par value, shall be preferred stock, and seventy thousand (70,000) shares, amounting to seven million dollars (\$7,000,000) shall be common stock.

The holders of preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the Consolidated Corporation, yearly dividends at the rate of seven per cent (7%) per annum and no

more, payable semi-annually on dates to be fixed by the by-laws or by the directors. The dividends on the preferred stock shall be of the kind known as cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart, with the result that if in any year dividends amounting to seven per cent (7%) shall not have been paid thereon, the deficiency shall become payable and shall be paid before any dividend shall be set aside for, or paid upon the common stock.

In the event that all cumulative dividends on the preferred stock for all previous year shall have been declared, and shall have become payable, and the accrued semi-annual installments for the current year on the preferred stock shall have been declared, and the Consolidated Corporation shall have paid such declared cumulative dividend for the previous years, and such accrued semi-annual installment upon said preferred stock, or shall have set apart from its surplus or net profit, a sum sufficient for the payment thereof, the board of directors may declare dividends upon the common stock, payable then or thereafter, out of any remaining surplus or net profit.

In the event of any liquidation, dissolution, or winding up, whether voluntary or involuntary of the Consolidated Corporation, the holders of preferred stock shall share equally, and be entitled to be paid in full, both the par amount of their shares, and the unpaid dividends accumulated thereon, before any amount shall be paid to the holders of common stock, and after the payment to the holders of the preferred stock, of its par value, and unpaid dividends accumulated thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock equally and pro rata, according to their respective shares.

(4) The capital stock of the Consolidated Corporation may be hereafter increased, from time to time, upon such vote of the stockholders as may be required by statute, for an increase of capital stock. In any such case, such increase may be of either common stock alone, preferred stock alone, or common and preferred stock, and in such amounts in respect of each, as the stockholders may determine. The unissued preferred stock or common stock, or both, may be issued from time to time in such amount and proportions, and for such consideration, as shall be determined by the board of directors, and not prohibited by law, and may be issued without any offering thereof, or sale thereof, to the stockholders holding stock at the time of such issue.

Each share of preferred and common stock shall have the same voting power in all corporate affairs, and each share thereof shall be entitled to one vote, except as otherwise provided by law.

With the consent and approval of the holders of two-thirds in amount of the outstanding capital stock, obtained at a meeting of the stockholders of the Consolidated Corporation, the entire assets and properties of the Consolidated Corporation may be sold, or disposed of in such manner, and for such consideration, as shall at that time be determined.

(5) The principal office of said Consolidated Corporation shall be located in the city of Lafayette, county of Tippecanoe, state of Indiana.

(6) The corporate powers of the Consolidated Corporation shall be exercised by a board of nine (9) directors, who shall be elected annually by the stockholders at the time and in the manner provided by law, and by the by-laws of the Consolidated Corporation. A majority of the board of directors shall constitute a quorum. The board of directors may appoint an executive committee, which, so far as may be lawful, shall have and may exercise all the powers of the board of directors between meetings of the board.

(7) The names and addresses of those who shall be directors for the first year, or that portion thereof before the next annual election of directors, and until others are chosen in their place, are as follows:

(Names and addresses.)

(8) The officers of the Consolidated Corporation, who shall hold their office until their successors are elected or appointed, according to law and the by-laws of the Consolidated Corporation, shall be such as may be elected, or appointed, by the board of directors, at their first meeting.

(9) The duration of such Consolidated Corporation shall be fifty (50) years.

(10) The number of shares of stock which shall be issued as fully paid and non-assessable, in the Consolidated Corporation to which the stockholders in each of the consolidating companies shall be entitled, shall be as follows:

NAME	No. Shares Issued	Allotment of New Shares	Ratio of Exchange
Jamestown Coal Co.—			
1st Preferred Stock	13,688	13,688 Preferred	Par for Par
Common Stock	20,000	20,000 Common	Par for Par
Jones Refrigerating Co.—			
Preferred Stock	30,000	25,800 Preferred	86-100 of a share of new Preferred Stock for one share of Jones Refrigerat- ing Company Preferred Stock.
Common Stock	40,000	40,000 Common	Par for Par

(11) That the holders of preferred stock of the Jamestown Coal Company and of the Jones Refrigerating Company, shall be entitled, upon surrender of their certificates for such stock respectively in exchange for preferred stock of the Consolidated Corporation, as aforesaid, to receive a sum in cash equal to the amount of dividends accumulative to the date when such consolidation shall become effective, and then remaining unpaid upon the stock so surrendered.

(12) The Consolidated Corporation shall be, and is vested with, and shall hold and enjoy, all the powers, privileges, rights, franchises, property, real, personal, and mixed, claims, demands, and estates, which may be owned, possessed, or enjoyed by each of said consolidating companies, and each of said consolidating companies hereby agrees to make, execute, and deliver any and all further conveyances, assignments, and assurances in the law, and things necessary to vest the title thereof in said Consolidated Corporation.

(13) The debts, liabilities of each of said consolidating companies, existing or accrued prior to this consolidation, and all expenses incidental to such consolidation, shall be assumed and borne by the Consolidated Corporation.

(14) The stockholders of record of said consolidating companies shall respectively be entitled to receive, in exchange for and upon surrender of their certificates of stock in such consolidating companies, certificates of stock in the Consolidated Corporation as above provided, and in proportional amounts based upon the ratio of exchange hereinabove set forth, but no certificates for fractional shares shall be issued by said Consolidated Corporation. The board of directors of said Consolidated Corporation shall have power to provide for the issuing of fractional warrants of stock scrip, which, when presented in an amount aggregating the par amount of one or more whole shares, shall entitle the holders thereof to a certificate for such share or shares.

The Consolidated Corporation shall without unnecessary delay issue certificates of stock in such form as may by the board of directors be deemed advisable, and such board shall provide and adopt such rules and regulations as may be necessary or proper for the issuing and transfer of the shares of the capital stock of such Consolidated Corporation.

(15) At the first meeting of the board of directors of the Consolidated Corporation, which shall be held as soon as practicable, after such consolidation shall have become effective, the directors or their successors shall adopt a code of by-laws, and elect or appoint the officers of the Consolidated Corporation as aforesaid.

This agreement and these articles shall be executed on the part of each of the consolidating companies, by their proper officers, and under their corporate seals, in as many counterparts as such officers may determine, and each such counterpart shall be deemed an original.

In Witness Whereof, The consolidating companies have caused their respective corporate names to be hereto affixed, by their respective presidents or vice-presidents and their respective corporate seals to be hereunto affixed and attested by their respective secretaries or assistant secretaries, this 26th day of January, one thousand nine hundred and twenty-seven (1927).

JAMESTOWN COAL COMPANY.

(Seal.)
Attest:
.....
Secretary.

By.....
President.

JONES REFRIGERATING COMPANY.

(Seal.)
Attest:
.....
Secretary.

By.....
President.

§ 945. Option to a Promoter of a Consolidation.

Memorandum of Agreement, Entered into this 27th day of October, 1927, by and between the undersigned owners and holders of property, or shares of capital stock or interest in the Hynes Clay Company, hereinafter called the vendors, parties of the first part, and George Churchill, hereinafter called the Consolidation Purchaser, party of the second part, witnesseth:

Whereas, The Consolidation Purchaser desires to obtain the right to purchase and acquire for, or to have purchased and acquired by, a corporation hereinafter to be designated by him, and hereinafter known as the Construction Company, the property hereinafter described; and

Whereas, The vendors are the owners of and are willing to sell to the Consolidation Purchaser the property hereinafter described;

Now, Therefore, In consideration of the work and services performed in the promotion of a consolidation of the fire-proofing manufacturers of the state of New Jersey, by the Consolidation Purchaser, and in further consideration of the action to be taken by the Consolidation Purchaser herein, and of twelve hundred dollars (\$1200) to the vendors by him paid (receipt whereof is hereby acknowledged), the vendors hereby covenant and agree with the Consolidation Purchaser as follows:

(1) The vendors if, and when, so requested by the Consolidation Purchaser at any time before January 26, 1928, will sell, convey, assign, transfer, and deliver unto the Consolidation Purchaser, his heirs, executors, administrators, survivors, or assigns, by good and indefeasible title, and free and clear of all encumbrances and all indebtedness and liability (except such as are specifically stated in the schedule No. 1 hereto annexed, and which is hereby made a part hereof), all their, and each of their, property, shares of capital stock of, and interest in said Hynes Clay Company, to the extent set opposite their respective signatures, and upon and subject to the terms hereinafter provided. A general but not exclusive schedule of the assets of the property of the Hynes Clay Company is hereto annexed, and made a part hereof, marked schedule No. 2.

(2) The purchase price of the property acquired, as set forth in paragraph (1), shall be two hundred and ninety thousand dollars (\$290,000) and the twelve hundred dollars (\$1200) paid as part consideration for this contract shall be applied on account thereof.

(3) If, and in case, the Consolidation Purchaser shall make his election to purchase said property, property interests, and shares of capital stock, payment at the price aforesaid shall be made wholly in cash, or at the option of the vendors, one hundred and fifty thousand dollars (\$150,000) in cash, and the remainder thereof in the preferred and common stocks of the Construction Company, under the terms and conditions set forth in the exhibit hereto annexed, and made a part hereof, as "Vendors' Underwriting Proposition."

(4) The vendors will allow the appraisers, accountants, attorneys, and agents of the Consolidation Purchaser full access to and examination of all the property, books, inventories, records, title, corporate status, and affairs

of their said business, covering a period not exceeding three years last past, and will likewise make and submit forthwith to such appraisers and accountants, full and true inventories, balance sheets, profit and loss income statement, and other financial or manufacturing statement of any kind, and upon demand will furnish maps, complete abstract of title, and other data which said appraisers, accountants, and attorneys may deem necessary.

(5) In consideration of the execution of this agreement by the Consolidation Purchaser, and by the vendors severally, and in the event of the purchase of and payment for said property upon the terms of this agreement, and in further consideration of such purchase and payment, the vendors severally and expressly covenant and agree with the Consolidation Purchaser, his heirs, executors, administrators, survivors, or assigns that they will not, directly or indirectly, individually or as officers, directors, or agents of any corporation, firm, or individual, engage or be interested in the business of manufacturing, buying, selling, or dealing in any kind of fire brick, or fire-proofing materials in the United States, or any of the territory thereof, for a period of seventeen years from and after the date of such purchase and payment, except with the consent, or in the employment of the said Construction Company, or the parties to whom this contract may be assigned by the Consolidation Purchaser, it being understood and agreed that the vendors' good will is one of the essential considerations for the execution of this contract by the Consolidation Purchaser. They are, however, in no way restricted in the manufacture of any article which in whole or in part is made from magnesite.

(6) The Consolidation Purchaser shall have, and hereby there is vested in him the right to assign, transfer, and set over to such banker or bankers, or other party, as shall be nominated by such Consolidation Purchaser, any or all of his rights, under and in this agreement, and thereupon such assignee (provided that such assignment be by written instrument, acceptable and accepted by such assignee, and not otherwise), shall be subrogated to, and shall have all the right and interest, and shall assume all the liability which are vested in or attached to the said Consolidation Purchaser, and which may be so assigned, and upon such accepted assignment, the Consolidation Purchaser shall be fully released and discharged from all liability, obligation, or responsibility, if any there be, under this agreement.

(7) The Consolidation Purchaser will cause to be made promptly an audit, examination, and appraisal of the property covered by this contract, and will thereafter and on or before the 26th day of January, 1927, give notice in writing to the vendors by a communication addressed to the Hynes Clay Company, at its principal place of business, No. 29 Crofts Building, Jersey City, New Jersey, of his election to avail of this option, and such notice shall be accompanied by a statement showing the proposed total issue of bonds, and preferred and common stock of the Construction Company, and also the aggregate net earnings for the past two years of the concern being purchased by it.

No mistake, error, or variation from the final figures in such statement of securities to be issued or aggregate net earnings, however, shall void the right of the Consolidation Purchaser to purchase the property of the vendors for cash at the purchase price herein.

(8) The vendors will within ten days after the receipt of a notice and statement mentioned in paragraph number seven (during which period they shall have the right to investigate the accuracy of the figures in said statement), notify the Consolidation Purchaser of their intention to exercise the option given them, in accordance with paragraph number three, to take the remainder of their purchase price in stock, according to the terms there set forth, and the exhibit thereto, and thenceforth they will be bound thereby.

(9) The vendors hereby certify that schedule No. 3, which is hereto annexed and made a part hereof, correctly states for the period therein set forth:

The amount of goods sold by them.

The gross earnings.

The net earnings.

The amount of interest paid for borrowed money.

The amount paid for salaries of president, vice-president, secretary, treasurer, and general manager.

(10) To facilitate purchase and payment hereunder, the vendors when called upon so to do by the Consolidation Purchaser, will deposit with the Metropolitan Trust Company of Jersey City, the certificates for the shares so owned or controlled by them respectively, duly assigned in blank, and their proper conveyances of, and abstracts of title respectively, the property covered by this agreement, and will cause said certificates or other property to be delivered by said trust company to the said Consolidation Purchaser, his heirs, executors, administrators, survivors, or assigns, upon payment being made thereof as herein provided. In the event that this agreement be not so consummated, then and thereupon such certificate, conveyances, abstracts, and other property shall be returned to the vendors respectively so depositing the same, without expense of any kind. In evidence of such deposits hereunder, the trust company shall issue and deliver to the vendors, its proper receipt. All payments and deliveries provided for by this agreement shall be made at the office of said trust company; and the vendors agree that during the period covered by this contract no increase in its capital stock, and no bond, mortgage, lease, or conveyance upon or in respect of its real estate or plant, or any of its property, shall be made, and that allowance shall be made to the Consolidation Purchaser for any dividends paid, or distribution of surplus profits, or earnings after the date hereof.

(11) At the time of transfer hereunder, upon request, the vendors will procure for the Consolidation Purchaser, or his assigns, the resignation in writing of all its directors and officers.

(12) The parties hereto severally and respectively will make, execute,

acknowledge, and deliver in due form of law, all such conveyances or other instruments, and will do all such acts and things as reasonably may be required, the one from the other, to fully carry out the purposes of this agreement.

In Witness Whereof, The said parties have hereunto set their hands and seals, the day and year first above written.

(Seal.)

Attest:

JAMES RYAN, Secretary.

Name.

HYNES CLAY COMPANY.

By JOHN EDMOND,

President.

Number of Shares.

.....
.....

Vendors' Underwriting Proposition.

(Referred to in foregoing.)

(Schedules omitted.)

The Consolidation purchaser will endeavor to observe like rules of valuation in purchase of all property.

For the aggregate purchase price of all the concerns, as set forth in paragraph two in the vendors' agreement, foregoing, the Construction Company will issue, or cause to be issued under its guaranty, five per cent (5%) bonds (first mortgage debenture or collateral trust, and in more or several series, at its option), in an amount not to exceed thirty-three and one-third per cent (33 $\frac{1}{3}$ %) of such aggregate purchase price, and six per cent (6%) cumulative preferred stock for the remainder of such aggregate purchase price.

Each of the vendors taking a part of their purchase price in preferred and common stock of the Construction Company and under paragraph three of the vendors' agreement, foregoing (there called the "remainder"), will receive such part or remainder of purchase price in the six per cent (6%) cumulative preferred stock of the Construction Company at par, and in addition thereto, and as a bonus herewith will be paid fifty per cent (50%) thereof in the common stock of the Construction Company, at par.

The vendors (taking part of the remainder of their purchase price in stock under paragraph two of vendors' agreement, foregoing) will be paid a further amount of common stock (providing their earnings justify it) in the following manner:

The average net earnings of the vendors for the past two years shall be ascertained, and the auditor's estimates of earnings upon new plants erected or acquired within these two years, whose earnings would not otherwise receive credit, shall be added thereto.

The ratio that the part or remainder of purchase price (that the "vendors" take in stock) bears to the total purchase price shall be ascertained and such rate shall be applied to such average net earnings, and there shall be deducted from the result thereof an amount equal to six (6) per cent of the "vendors'" preferred stock (payable thereon) and common stock shall be paid to the "vendors" on the remainder of such proportion

of said earnings on the basis of what would have been four (4) per cent, except for the issue for good will hereinbefore provided for.

§ 946. Consolidation of Railroads.—In the case of the consolidation of two railroad corporations, the resolution to be passed by the board of each corporation should be as follows:

RESOLUTION OF CONSOLIDATION TO BE PASSED BY EACH
BOARD OF DIRECTORS.

On motion, duly made, seconded and carried, the following preambles and resolutions were adopted:

Whereas, The Market Street Railway Company, the Chestnut Railway Company, and the High Street Railway Company desire, and have proposed, to consolidate and amalgamate their respective capital stocks, debts, properties, assets and franchises of each other, and of this company; and

Whereas, It is the sense of this board that such consolidation and amalgamation will be mutually advantageous; and

Whereas, The respective boards of directors of said corporations have proposed such consolidation and amalgamation of their capital stocks, debts, properties, assets, and franchises, with each other and with this company, upon the terms following, to wit:

First. That the said consolidation and amalgamation shall be made at once and that the name and style of said consolidation and amalgamated corporation shall be the "Market Street Railway Company"; that it shall continue in existence for a period of fifty years from the date of the articles of consolidation, amalgamation and incorporation.

Second. That the several capital stocks, debts, properties, assets, and franchises held, owned or possessed by each of said corporations shall be vested in said consolidated and amalgamated corporation, the Market Street Railway Company, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all the conditions, stipulations, contracts, liens, claims and charges thereon, and to all debts and obligations of said respective corporations and said consolidated and amalgamated corporations shall fully complete, carry out and perform all valid conditions, stipulations and contracts heretofore made by, and shall pay and discharge all liens, claims and charges heretofore created or suffered by, any of said corporations on their respective properties, and shall pay and discharge all valid debts and obligations of every kind, character and description heretofore incurred or assumed by or now existing against any of said corporations.

Third. That the objects, the purposes, the capital stock, the board of directors, and the principal place of business shall be as expressed in the articles of consolidation, amalgamation and incorporation hereinafter set forth.

Fourth. That the several stockholders of each of said corporations shall have issued to them such a number of shares of the consolidated corpora-

tion out of the shares thereof hereinafter allotted to the stockholders of their respective corporations, and shall bear the same proportion to the total number of shares so allotted, as the number of shares held by such stockholders in their respective corporations shall bear to the whole issued and outstanding capital stock thereof.

Fifth. That the entire capital stock of the consolidated corporation, consisting of fifteen thousand shares, the same being the aggregate number of shares held by the stockholders of said three corporations shall be distributed as follows:

	Shares.
To the hareholders of the said Market Street Railway Company	6,000
To the stockholders of each of the other two consolidating companies	4,500

And Whereas, The holders of more than three-fourths in value of all the capital stock of this and each of the aforesaid corporations have given written consent to such consolidation and amalgamation.

Now, Therefore, Be It Resolved, That the propositions hereinbefore recited be, and they are hereby accepted, and it is agreed that this company consolidate and amalgamate with the said (naming the other two companies).

Resolved, Further, That the president and secretary of this company be, and they are hereby authorized, empowered and directed to execute on behalf of this company and under its corporate seal, articles of consolidation, amalgamation and incorporation, in words and figures following, to wit:

(Here insert the proposed articles of consolidation and incorporation.)

§ 947. Ratification by Stockholders.—It is usually provided that consolidation shall not take effect until the same shall have been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths, or some other proportion, of the subscribed capital stock of their respective corporations. The ratification by the stockholders should be appended to the new articles described below.

§ 948. Incorporation and Consolidation.— In case of such consolidation “articles of incorporation and consolidation” should be prepared, setting forth: First, the name of the new corporation; second, the purpose for which it is formed; third, the place where its principal business is to be transacted; fourth, the term for which it is to exist, which shall not exceed the statutory period; fifth, the number of its directors, and the names and residences of the persons appointed to act as such until their successors are

elected and qualified; sixth, the amount of its capital stock (which should not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers), and the number of shares into which it is divided; seventh, the amount of stock actually subscribed, and by whom; eighth, the termini of its road or roads and branches; ninth, the estimated length of its road or roads and branches; tenth, the names of the constituent corporations, and the terms and conditions of consolidation in full. Such articles of incorporation and consolidation must be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There must be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. Such new articles may be as follows:

§ 949. Articles of Consolidation and Incorporation.

Market Street Railway Company,

Chestnut Street Railway Company, and

High Street Railway Company.

Articles made and executed on the 1st day of May, 1927, by and between the Market Street Railway Company, party of the first part, the Chestnut Street Railway Company, party of the second part, and the High Street Railway Company, party of the third part; all of said parties being railroad corporations duly organized and existing under the laws of the state of, and having their respective principal places of business in the city of, in said state.

Witnesseth, That Whereas, The said party of the first part, the Market Street Railway Company, is the owner of certain street railways in the streets of, and within, the corporate limits of the aforesaid city and state, more particularly described as follows: Commencing, etc. (here specify particularly the point of commencement, route and termini of each and every line owned and operated). The total length of said railways being, as estimated miles; and also of all rights, franchises and privileges granted in respect of, and in connection with, said railways. And the said party of the first part, the Market Street Railway Company, is also the owner of certain rights, franchises and privileges for the construction, maintenance and operation of street railways in the streets and within the corporate limits of said city more particularly described as follows, to wit: Commencing, etc. (here insert a particular description of point of

commencement, route and termini of franchises granted, but not built upon or improved).

And Whereas, Said party of the second part, the Chestnut Street Railway Company, is the owner, etc. (here describe its properties in the same form as of the Market Street Railway Company. Follow it with a like paragraph as this as to the High Street Railway Company, the party of the third part):

And Whereas, Said parties, and all of them, now are, and ever since their organization and incorporation have been, railroad corporations duly and lawfully organized and existing as such, under the laws of the state of, relating to the formation and existence of railroad corporations.

And Whereas, The said respective parties believe that a consolidation and amalgamation of their capital stocks, their debts, properties, assets and franchises, will be mutually advantageous.

And Whereas, The respective boards of directors of said corporations parties hereto, have agreed upon the consolidation and amalgamation of said corporations, their capital stocks, debts, properties, assets and franchises in the following manner, to wit:

First. That the said consolidation and amalgamation shall be made at once, and that the name and style of the consolidated and amalgamated corporation shall be "Market Street Railway Company." That it shall continue in existence for a period of fifty years from the date of these articles.

Second. That the several capital stocks, debts, properties, assets and franchises held, owned or possessed by each of said corporations shall be vested in said consolidated and amalgamated corporation, the Market Street Railway Company, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all the conditions, stipulations, contracts, liens, claims and charges thereon, and to all debts and obligations of said respective corporation; and said consolidated and amalgamated corporation shall fully complete, carry out, and perform all valid conditions, stipulations and contracts heretofore made by and shall pay and discharge all liens, claims and charges heretofore created or suffered by any of said corporation on their respective properties and shall pay and discharge all valid debts and obligations of every kind, character and description incurred or assumed by or now existing against any of said corporations.

Third. That the objects, the purposes, the capital stock, the board of directors, and the principal place of business shall be as expressed in the articles of consolidation, amalgamation and incorporation hereinafter set forth.

Fourth. That the stockholders of each of said corporations, parties hereto, shall have issued to them the number of shares of the capital stock of the consolidated and amalgamated corporation which the board of directors of the corporations, parties hereto, have allotted to such stockholders respectively, upon the surrender of the certificates of stock held by said stockholders in said corporations respectively.

And Whereas, The holders of more than three-fourths in value of all the capital stock of, and issued by, each of said respective boards of directors, and for the purposes expressed in the articles of consolidation, amalgamation and incorporation following:

Now, Therefore, Know All Men by These Presents, That the parties hereto, in pursuance of the laws of the state of, in such cases made and provided, do hereby consolidate and amalgamate their capital stocks, debts, properties, assets and franchises for the uses and purposes aforesaid, and do hereby vest the same in the said consolidated and amalgamated corporation, the Market Street Railway Company, and in pursuance of said consolidation and amalgamation, and in order to more fully carry the same into force and effect, do hereby adopt the following articles of consolidation, amalgamation and incorporation:

I.

The name of said consolidated and amalgamated corporation shall be Market Street Railway Company.

II.

The objects and purposes of said consolidated and amalgamated corporation are as follows, to wit:

(Then follow the purposes as in original articles by which a street railway corporation is formed with respective routes, covering the entire ground separately covered by all the three companies prior to consolidation.)

III.

(Place of business.)

IV.

(Term of existence.)

V.

(Number and names of directors.)

VI.

(Amount of capital stock.)

VII.

(Amount subscribed and by whom.)

VIII.

That the termini of the roads and the branches thereof of the corporation are as follows: (Insert names of termini.)

IX.

That the estimated length of the roads and the branches thereof of the corporation is miles.

X.

The amount of capital stock which was actually subscribed in each of said corporations, parties hereto, at the time of their formation, and the names of the persons by whom the same were subscribed, and the number of shares subscribed by and then held by each, was as set forth in the

original articles of incorporation of the several companies now consolidated and amalgamated and the same was, and now is, more than one thousand dollars per mile of the estimated length of the several railroads mentioned and described in the said respective articles of incorporation.

XI.

That of the capital stock of each of said corporations had, at the time of their formation (where the same was required by law), been actually paid to the respective treasurers thereof, the amounts specified in their original articles of incorporation verified by the affidavits filed in the office of secretary of the state of, and the amount so paid in were in each case per cent of the subscribed capital stock.

XII.

The amount of the capital stock of the said corporations which has been subscribed and actually paid in exceeds the amount of one thousand dollars per mile of the entire length of the said railroad, as estimated and as stated and as set forth in Article II hereof.

In Witness Whereof, The said parties have caused these presents to be signed by their respective presidents and secretaries and their corporate seals to be hereunto affixed, pursuant to resolutions of their respective boards of directors, this 20th day of May, 1927.

MARKET STREET RAILWAY COMPANY.

By H. L. DEMOREST,
President,

(Corporate Seal.)

J. B. MOULTON,
Secretary.

CHESTNUT STREET RAILWAY COMPANY.

By A. D. WARREN,
President.

(Corporate Seal.)

GEO. L. SANSOME,
Secretary.

HIGH STREET RAILWAY COMPANY.

By JOSEPH THAYER,
President.

(Corporate Seal.)

H. L. BURNS,
Secretary.

(Acknowledgments of each and all of those signing.)

This Is to Certify, That we, the undersigned, being holders of more than three-fourths in par value of all stocks of the Market Street Railway Company, do hereby assent to the consolidation of the capital stock, debts, properties, assets and franchises of the Market Street Railway Company, Chestnut Street Railway Company, and High Street Railway Company, in such manner as may be agreed upon by the respective boards of directors of said companies.

Done this 1st day of May, 1927.

H. L. Demorest.....	2,000 shares
J. F. Moulton.....	500 shares
C. W. Black.....	1,000 shares
Evan Holcomb	1,000 shares
D. F. Lincoln.....	500 shares

In some states there must be published a notice of the consolidation. The following will serve:

§ 950. Published Notice After Consolidation.

Pursuant to the statute in such case made and provided, notice is hereby given that the Ronald Street Railway Company, the Baker Street Railway Company, and the High Street Railway Company, upon the written consent of the stockholders holding more than two-thirds in part value of all the stock of each of said corporations respectively, and by agreement of the respective boards of directors of said corporations made and entered into in accordance with such consent, and pursuant to the statute in such case made and provided, have consolidated their capital stocks, debts, properties, assets and franchises, under the corporate name and style of the Ronald Street Railway Company.

Done at, the 30th day of May, 1927, by order of the board of directors of the Ronald Street Railway Company.

J. F. MOULTON, Secretary.

§ 951. Consolidated Corporation Takes Powers of Constituent Corporations.—It is usual in statutes authorizing the consolidation of corporations to provide that the property, powers, privileges, franchises, etc., belonging to the constituent companies at the time of consolidation, shall pass to and vest in the new corporation formed by the consolidation of the old. Even in the absence of such a provision the effect is the same, unless there be some provision to the contrary, either in the statute or agreement of consolidation, the new company succeeds to the powers and properties of its constituents.¹⁸

§ 952. Debts and Liabilities of Constituent Corporations.—A consolidation does not relieve the constituent corporations of

¹⁸ *Crawfordsville, etc., Turnpike Co. v. Fletcher*, 104 Ind. 97, 2 N. E. 243; *Berry v. Kansas City, etc., Ry. Co.*, 52 Kan. 759, 39 A. S. R. 371, 34 Pac. 805; *National Foundry, etc., Works v. Oconto City Water Supply Co.*, 105 Wis. 48, 81 N. W. 125.

their liabilities.¹⁹ Ordinarily, the statute providing for the consolidation of corporations makes provisions for the rights of the creditors of the constituent corporations and quite frequently subjects the new company to all liabilities or debts incurred by the old companies at the date of consolidation. Where such provisions exist, creditors of, and those having claims against, the constituent corporations, may sue the consolidated corporation thereon and hold it liable.²⁰ However, in the absence of all arrangements, the consolidated corporation becomes answerable for all the liabilities incurred by the consolidating corporations prior to the consolidation. The foundation of such liability may rest on a statute or an agreement, either express or implied. If the statute does not provide that the new company shall assume the debts and liabilities of the constituent companies, and there is no express agreement respecting the same, the debts of the original companies follow as an incident of the consolidation, and become by implication the obligations of the new corporation.¹ And these liabilities incurred by the consolidated company are not confined to those which arose out of contracts entered into by the constituent companies, but include liabilities arising *ex delicto*.²

§ 953. Status of Companies After Consolidation.—By the consolidation of two corporations under statutory authority, the original corporation ceases to exist, and the consolidated corporation becomes a distinct entity, a new corporation,³ and succeeds to all the faculties, property, rights, and franchises of its component parts, and becomes subject to all the duties, obligations, and con-

¹⁹ *Smith v. Los Angeles, etc., Ry. Co.*, 98 Cal. 210, 33 Pac. 53; *Morrison v. American Snuff Co.*, 79 Miss. 330, 30 So. 723, 89 A. S. R. 598; *Vicksburg, etc., Telephone Co. v. Citizens' Telephone Co.*, 79 Miss. 341, 30 So. 725, 89 A. S. R. 656.

²⁰ *Northern Cent. Ry. Co. v. Hering*, 93 Md. 164, 48 Atl. 461; *Batterson v. Chicago, etc., R. Co.*, 53 Mich. 125, 18 N. W. 584; *Polhemus v. Fitchburg Ry. Co.*, 123 N. Y. 502, 26 N. E. 31.

¹ *Berry v. Kansas City, etc., R. R. Co.*, 52 Kan. 774, 39 A. S. R. 381, 36 Pac. 724; *People v. Louisville, etc., Ry. Co.*, 120 Ill. 48, 10 N. E. 657; *Langhorne v. Richmond Ry. Co.*, 91 Va. 369, 22 S. E. 159.

² *Warren v. Mobile, etc., Ry. Co.*, 49 Ala. 582; *Palmer v. Chicago, etc., R. Co.*, 142 Mo. App. 633, 121 S. W. 1087.

³ *Isom v. Rex Crude Oil Co.*, 147 Cal. 663, 82 Pac. 319; *Market Street Ry. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

ditions imposed upon them.⁴ The view taken by the weight of authority is that the result of an interstate consolidation is the creation of a new corporation, distinct from the entities it has replaced. It is, however, a corporation of each state assisting in its creation.⁵ It has but one set of stockholders, and each of these has an interest, by virtue of the ownership of the shares of such stock in the management of its property and business everywhere. Its single board of directors has a domicile in each state, and its stockholders, directors, and officers can, in the absence of a statutory provision to the contrary, hold meetings and transact corporate business in any of the states concerned in its creation so as to bind the corporation and its property everywhere.⁶

The fact that the consolidated corporation formed by the union of the corporations of several states is a new corporation and a unit does not deprive the various states of their jurisdiction over it, nor render it the less subject to their laws. Its privileges in each state are those conferred by the laws of that state, and its obligations in each state are those required of it under the laws of that state.⁷ Thus it has been held that a corporation formed by the consolidation of a domestic corporation and one or more foreign corporations is a domestic corporation within the provisions of a statute controlling the exhibition of stock books of the corporation.⁸

⁴ *Chicago Title, etc., Co. v. Zinser*, 264 Ill. 31, 105 N. E. 718, A. C. 1915D 931.

⁵ *State v. Keokuk, etc., Ry. Co.*, 99 Mo. 30, 12 S. W. 290; *Ohio, etc., Ry. Co. v. People*, 123 Ill. 467, 14 N. E. 874.

⁶ *Graham v. Boston, etc., Ry. Co.*, 118 U. S. 161, 6 S. Ct. 1009, 30 L. Ed. 196.

⁷ *In re St. Paul, etc., R. Co.*, 36 Minn. 85, 30 N. W. 432; *Trester v. Missouri Pacific Ry. Co.*, 33 Neb. 171, 49 N. W. 1110.

⁸ *Sage v. Lake Shore, etc., Ry. Co.*, 70 N. Y. 220.

CHAPTER LV.

EXTENSION OF LIFE OF CORPORATION.

- § 954. Extension of Corporate Existence.
- § 955. Action by Stockholders.
- § 956. Resolution of Stockholders Extending Corporate Existence.
- § 957. Assent of Stockholders to Extension of Life of Corporation.
- § 958. Filing Certificate of Extension in Office of Secretary of State.
- § 959. Certificate of Extension of Corporate Existence.
- § 960. Effect of Extension Upon Existing Franchises.

§ 954. **Extension of Corporate Existence.**—In those states where corporations are permitted to incorporate only for some certain number of years, there are generally statutory provisions by a compliance with which a corporation may extend its corporate existence before the expiration of the period fixed by its charter, or may even renew its charter after the expiration thereof.¹ The legislature is empowered to prescribe or extend the term of existence of corporations, and, except as restricted by the constitution, its power in this regard is absolute.² Such legislation is not unconstitutional as impairing the obligation of contracts between the corporation and its debtors or creditors.³

After the expiration of the charter of a corporation, it may be revived in all its original force, by a subsequent statute, which will merely revive the former corporation, and will not create it anew,⁴ where such renewal is accepted by the corporation.⁵ Usually an extension of corporate existence carries with it the right to exercise all pre-existing franchises and privileges.⁶

§ 955. **Action by Stockholders.**—In some states, such extension may be made at any meeting of the stockholders, or members,

¹ *People v. Auburn, etc., Turnpike Co.*, 122 Cal. 335, 55 Pac. 10; *Jersey City v. North Jersey Street R. Co.*, 73 N. J. L. 175, 63 Atl. 906; *People v. James*, 5 App. Div. 412, 39 N. Y. Supp. 313.

² *Boca Mill Co. v. Curry*, 154 Cal. 326, 97 Pac. 1117.

³ *Foster v. Essex Bank*, 16 Mass. 245, 8 A. D. 135.

⁴ *Lincoln, etc., Bank v. Richardson*, 1 Me. 79, 10 A. D. 34.

⁵ *McKemie v. Eady Baker Grocery Co.*, 146 Ga. 753, 92 S. E. 282.

⁶ *People v. Auburn, etc., Turnpike Co.*, 122 Cal. 335, 55 Pac. 10; *Ozan Lumber Co. v. Davis Sewing Machine Co.*, 284 Fed. 161.

called by the directors especially for considering the subject, if voted for by stockholders representing two-thirds of the capital stock; or by two-thirds of the members where there is no capital stock; or may be made upon the written assent of two-thirds of the members or of stockholders representing two-thirds of the capital stock.⁷ If a meeting is called for the purpose of securing the authority of the stockholders or the members to extend the corporate existence, the board of directors should take care that it is properly called as provided for in the by-laws, and that the purpose is distinctly stated in the notice.

§ 956. Resolution of Stockholders Extending Corporate Existence.

Resolved, That the Owens River Valley Electric Railway Company hereby extends the term of its corporate existence for a period of fifty years from and after the 12th day of September, 1927.

It is much more convenient, however, simply to secure the assent of two-thirds of the stockholders or of the members by circulating a writing in the following form:

§ 957. Assent of Stockholders to Extension of Life of Corporation.

Know All Men by These Presents, That we, the undersigned, owners and holders of more than two-thirds of the issued capital stock of the Owens River Valley Electric Railway Company (a corporation organized and existing under the laws of the state of California and having its principal place of business at Room 620 Chronicle Building, in the city and county of San Francisco, state of California), to wit: the owners and holders of 1551 shares of capital stock of this corporation, do hereby assent in writing, to an extension of the corporate existence of said corporation for a period of fifty (50) years from and after the 12th day of September, 1927.

Dated at San Francisco, Cal., this 7th day of September, 1927.

JOHN ADAMS, owning and holding 500 shares.

JAMES WILSON, owning and holding 551 shares.

HENRY JUDSON, owning and holding 500 shares.

§ 958. Filing Certificate of Extension in Office of Secretary of State.—It is sometimes required that a certificate of the vote or assent of the stockholders bearing the corporate seal and signed

⁷ California Civil Code, sec. 401.

and sworn to by the president and secretary and a majority of the directors of the corporation be filed in the office of the secretary of state, whereupon the term of existence is extended for the period specified in the certificate; but a certified copy must be issued and transmitted for filing to the county clerk of the county in which the principal place of business was situated at the time of incorporation. Thereafter copies must be filed in every county where the corporation has or holds real property, or the corporation will be subject to certain penalties and liabilities.⁸

§ 959. Certificate of Extension of Corporate Existence.

We, the undersigned, John Adams, the president, and James Wilson, the secretary, and John Adams, James Wilson, and Henry Judson, constituting a majority of the directors of the Owens River Valley Electric Railway Company, a corporation organized and existing under the laws of the state of, do hereby certify and declare that on the 7th day of September, 1927, stockholders owning and holding more than two-thirds of the capital stock of said corporation, to wit, 1551 shares, gave their assent in writing to an extension of the corporate existence of said corporation for a period of fifty (50) years from and after the 12th day of September, 1927, a copy of which assent is as follows: ⁹

(Here insert copy of its assent.)

JOHN ADAMS,

President.

JAMES WILSON,

Secretary.

JOHN ADAMS,

JAMES WILSON,

HENRY JUDSON,

Members of the Board of Directors of said Corporation,
and a majority thereof.

State of California, County of San Diego, ss.

On this 28th day of September, A. D. 1927, before me, Edward Wood, a notary public in and for the said county of San Diego, state of California residing therein, duly commissioned and sworn, personally appeared John Adams, known to me to be the president of Owens River Valley Electric Railway Company, a corporation described in the within and annexed instrument, whose name is subscribed to said instrument as such president, and James Wilson, known to me to be the secretary of said Owens River Valley Electric Railway Company, whose name is subscribed to said instrument as such secretary, and they severally acknowledged to me that they executed said instrument as president and secretary respectively of

⁸ California Civil Code, sec. 401.

⁹ If a meeting of the stockholders or the members has been held, the certificate may be readily altered accordingly.

said corporation; and on the same day personally appeared before me, John Adams, James Wilson and Henry Judson, known to me to be the directors of said Owens River Valley Electric Railway Company and to be and to constitute a majority of the directors of said corporation, whose names are subscribed to said instrument as such directors, and as a majority thereof, and they severally acknowledged to me that they executed said instrument as directors of said Owens River Valley Electric Railway Company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county of San Diego, state of California, the day and year in this certificate last above written.

(Seal.)

EDWARD WOOD,

Notary Public in and for the County of San Diego,
State of California.

My commission expires December 18th, 1928.

§ 960. Effect of Extension Upon Existing Franchises.— Such extension is not construed to prolong or extend the duration of any franchise or privilege theretofore granted to any corporation or joint stock company by special legislative act, or by the municipal authorities of any county, city, city and county, town, or other political subdivision of the state, beyond the term fixed by the provisions of the act, ordinance or resolution conferring such privilege or franchise, or beyond the term fixed for the maximum period of existence of such corporation or joint stock company by laws in force and governing the formation and organization thereof at the time such corporation or joint stock company was formed or organized.¹⁰

¹⁰ California Civil Code, sec. 401.

CHAPTER LVI.

DISSOLUTION OR FORFEITURE.

- § 961. Methods by Which a Corporation May Be Dissolved.
- § 962. Right of Majority of Stockholders to Dissolve Corporation.
- § 963. Right of Minority Stockholders to Dissolve Corporation.
- § 964. Dissolution of Foreign Corporation.
- § 965. Involuntary Dissolution of a Corporation.
- § 966. Forfeiture of Corporate Franchises.
- § 967. Who May Institute Proceedings for Forfeiture.
- § 968. Dissolution by Expiration of Charter.
- § 969. Dissolution of Monopoly Under Anti-Trust Laws.
- § 970. Plan for Disintegration of Corporation Dissolved Under an Anti-Trust Law.
- § 971. Protective Agreement Between Preferred Stock Holders on Involuntary Dissolution of Corporation.
- § 972. Voluntary Dissolution of a Corporation.
- § 973. Preliminary Steps in Voluntary Dissolution.
- § 974. Resolution Calling Meeting to Consider Proposition to Dissolve.
- § 975. Published Notice of Stockholders' Meeting to Consider Proposition to Dissolve.
- § 976. Stockholders' Meeting to Consider Dissolution.
- § 977. Resolution of Directors Pursuant to Authority From Stockholders to Dissolve.
- § 978. Application for Dissolution of a Corporation.
- § 979. Form of Petition for Dissolution of a Corporation.
- § 980. Filing Application and Publication of Notice.
- § 981. Order of Court Setting Date for Hearing of Application for Dissolution.
- § 982. Notice of Application for Voluntary Dissolution of Corporation.
- § 983. Objections May Be Filed.
- § 984. Form of Objections to Application.
- § 985. Hearing of Application for Dissolution.
- § 986. Form of Decree of Dissolution of Corporation.
- § 987. Form of Decree of Dissolution. [Another Form.]
- § 988. Filing Certified Copy of Decree of Dissolution With Secretary of State.
- § 989. Certificate of Clerk to Decree of Dissolution of Corporation.
- § 990. Directors to Be Trustees of Dissolved Corporation.
- § 991. Determination of Who Are Trustees.
- § 992. Receipt, Ratification, and Release From Stockholders Upon Dissolution.
- § 993. Receipt From Stockholders on Dissolution. [Short.]
- § 994. Effect of Dissolution of Corporation.
- § 995. Appointment of Receiver Upon Dissolution of Corporation.

§ 961. Methods by Which a Corporation May Be Dissolved.

—The dissolution of a corporation is that result which follows the expiration of time limited by its charter, or the result of a judgment of a court of competent jurisdiction.¹ The methods by which a corporation may cease to have a corporate existence are the subject of statutory regulation in all the states. While the details of the procedure differ in the various states, the modes of dissolution are generally as follows: (1) By expiration of its term of life as limited in its charter; (2) by act of the legislature repealing or annulling its charter; (3) by the judgment or decree of a court of competent jurisdiction dissolving it for non-use or misuse of its franchise, or because of some act or omission working a forfeiture; and (4) by voluntary surrender of its charter.² Where the methods of dissolution are provided by statute, the rule is that a corporation can be dissolved only in the manner described.³

§ 962. Right of Majority of Stockholders to Dissolve Corporation.

—While the cases dealing with the right of the majority of the stockholders of a corporation to dissolve the corporation are not entirely harmonious, it may be said to be the general rule that in the absence of statutory or charter regulations the majority of the stockholders of a corporation whose existence is not definitely limited may, where it can be done without bad faith to the minority, seek and obtain a dissolution of the corporation.⁴ However, where the corporate existence is fixed for a specified time a unanimous consent of the stockholders is essential to its dissolution at an earlier date.⁵

The statutes of some jurisdictions allow a corporation to be dissolved on the vote of the holders of two-thirds of the stock of a

¹ *Lyons-Thomas Hardware Co. v. Perry Stove Mfg. Co.*, 86 Tex. 143, 155, 24 S. W. 16, 22 L. R. A. 802, 812.

² See statutes of particular state.

³ *Merrill Lodge v. Ellsworth*, 78 Cal. 166, 2 L. R. A. 841, 20 Pac. 399, 400.

⁴ *Parker v. Bethel Hotel Co.*, 96 Tenn. 252, 34 S. W. 209, 31 L. R. A. 706; *State v. Chilhowee Woolen Mills Co.*, 115 Tenn. 266, 89 S. W. 741, 112 A. S. R. 825, 2 L. R. A. (N. S.) 493.

⁵ *Barton v. Enterprise Loan, etc., Assoc.*, 114 Ind. 226, 16 N. E. 486, 5 A. S. R. 608; *Beidenkoff v. Des Moines Life Ins. Co.*, 160 Iowa 629, 142 N. W. 434, 46 L. R. A. (N. S.) 290.

corporation.⁶ In other states there are statutes providing for the dissolution of a corporation before the expiration of the term of its corporate existence, on the consent of the holders of two-thirds of the shares, and on the judgment of a court of competent jurisdiction.⁷ But even though a statute provides that a corporation shall be dissolved by the court on the application of two-thirds of all the stockholders a court of equity will refuse to dissolve a prosperous business corporation where it is evident that the only object of the dissolution is to "freeze out" some of the minority stockholders, and that no real dissolution is intended and that no dissolution would have been attempted if the owners of a majority of the stock could have bought out the undesirable minority stockholders.⁸

§ 963. Right of Minority Stockholders to Dissolve Corporation.—In the absence of special circumstances or statutory enactment the minority stockholders of a corporation are not entitled to maintain a suit in equity to have the corporation dissolved or wound up. Since to permit minority stockholders to maintain a proceeding to have the corporation dissolved merely because they are dissatisfied with the methods by which it is being conducted, it has been said, would be to permit them to control the affairs of the corporation, something to which they are not entitled.⁹ Courts of law have no jurisdiction to adjudge the dissolution of a corporation at the suit of an individual, whether suing as a stockholder or otherwise.¹⁰ And according to the ruling of a great majority of the courts, chancery courts, in the absence of a permissive statute, are without jurisdiction to dissolve a corporation and distribute its assets at the suit of one stockholder or a minority of the stockholders for any cause.¹¹ However, some courts, while still recog-

⁶ *Forrester v. Butte, etc., Consol. Copper, etc., Min. Co.*, 21 Mont. 544, 55 Pac. 229, 353; *William B. Riker, etc., Co. v. United Drug Co.*, 78 N. J. Eq. 319, 79 Atl. 1044; *Janeway v. Burn*, 91 App. Div. 1, 65, 86 N. Y. Supp. 628.

⁷ *Kohl v. Lilienthal*, 81 Cal. 378, 20 Pac. 401, 22 Pac. 689, 6 L. R. A. 520.

⁸ *Theis v. Spokane Falls Gas Light Co.*, 34 Wash. 23, 74 Pac. 1004.

⁹ *Troutman v. Council Bluffs St. Fair, etc., Co.*, 142 Iowa 140, 120 N. W. 730; *Hinkley v. Blethen*, 78 Me. 221, 3 Atl. 655.

¹⁰ *Folger v. Columbian Ins. Co.*, 99 Mass. 274, 96 A. D. 747.

¹¹ *Neall v. Hill*, 16 Cal. 146, 76 A. D. 508; *Stewart v. Pierce*, 116 Iowa 751, 89 N. W. 234.

nizing the general rule above stated, have deviated therefrom where it appeared that the objects of the corporation were impossible of attainment and that it was being ruined.¹² The unqualified jurisdiction of a court of chancery to hear and determine such cases by virtue of its general powers has, however, been affirmed directly in a number of jurisdictions.¹³

An abandonment by the corporation of the purposes for which it was organized, accompanied by non-use, seems to have been recognized as a ground for dissolution at the suit of minority stockholders.¹⁴ On the other hand the fact that the business is a losing one under the management of the majority stockholders is not a reason why the minority may have the corporation dissolved in equity, in the absence of some statutory authority.¹⁵ In some jurisdictions the courts are empowered by statute to grant a dissolution of a corporation in certain cases in a suit brought by minority stockholders.¹⁶ Thus, under a Maryland statute, minority stockholders may bring suit for the dissolution when the corporation is in a state of insolvency.¹⁷

§ 964. Dissolution of Foreign Corporation.—A court of one state has no power to dissolve a corporation created by the laws of another state. The corporation retains its legal existence until dissolved by a proceeding in the state which created it.¹⁸ And the fact that the officers and some of the property of the corporation are within reach of the process of the court does not affect the question.¹⁹ But it has been held under the Canadian Winding-Up

¹² *Bixler v. Summerfield*, 195 Ill. 147, 62 N. E. 849; *Miner v. Belle Isle Ice Co.*, 93 Mich. 97, 53 N. W. 218, 17 L. R. A. 412.

¹³ *Noble v. Gadsden Land, etc., Co.*, 133 Ala. 255, 31 So. 856, 91 A. S. R. 27; *Cantwell v. Columbia Lead Co.*, 199 Mo. 42, 97 S. W. 167.

¹⁴ *Ford v. Kansas City, etc., Short Line R. Co.*, 52 Mo. App. 449.

¹⁵ *Worth Mfg. Co. v. Bingham*, 116 Fed. 785, 54 C. C. A. 119; *Burham v. San Francisco Fuse Mfg. Co.*, 76 Cal. 24, 17 Pac. 940.

¹⁶ *Pride v. Pride Lumber Co.*, 109 Me. 452, 84 Atl. 989; *Bull v. International Power Co.*, 84 N. J. Eq. 209, 93 Atl. 86.

¹⁷ *Howeth v. Colbourne Bros. Co.*, 115 Md. 107, 80 Atl. 916.

¹⁸ *Republican Mountain Silver Mines v. Brown*, 24 L. R. A. 776, 7 C. C. A. 412, 19 U. S. App. 203, 58 Fed. 648; *Young v. Farwell*, 139 Ill. 326, 28 N. E. 845; *Edwards v. Schillinger*, 245 Ill. 240, 33 L. R. A. (N. S.) 895, 137 A. S. R. 308; *Richardson v. Clinton Wall Trunk Mfg. Co.*, 181 Mass. 580, 64 N. E. 400.

¹⁹ *Redmond v. Enfield Mfg. Co.*, 13 Abb. Pr. N. S. (N. Y.) 332.

Act that a Canadian court has power to wind up the affairs of a foreign corporation so far as they are within its territorial jurisdiction.²⁰

§ 965. **Involuntary Dissolution of a Corporation.**—Generally, the state, on the information of the attorney general, is the only party which may initiate proceedings for the involuntary dissolution of a corporation. Where a corporation has not organized and commenced business within a specified period or has disposed of its property and ceased to transact business for the statutory term, the attorney general may, at the instance of a creditor, institute proceedings for a dissolution.¹ So, also, if parties are assuming to act as a corporation without authority or are conducting the affairs of a duly incorporated enterprise in a manner not authorized by its articles, an action may be brought by the attorney general in the name of the people of the state, upon his own information, or upon a complaint of a private party, or when he is directed to do so by the governor.² The mere existence, however, of any of the conditions warranting a dissolution does not of itself effect a dissolution, even where the statute provides that under such circumstances "the corporate powers shall cease." Furthermore, the condition complained of must exist at the time that the action is brought. If, therefore, an organization has been effected, or business started or resumed before the action has been commenced, the action is barred.³

The necessity for an adjudication of forfeiture is generally recognized, though a statute provides that in case of default on the part of the corporation in specified matters the corporation shall be dissolved or the charter deemed forfeited.⁴ A statute will be construed against an *ipso facto* forfeiture, if the language used is fairly susceptible of such interpretation.⁵

²⁰ Hyde v. Scott, 75 Misc. 487, 133 N. Y. Supp. 904.

¹ Martin v. Deetz, 102 Cal. 55, 41 A. S. R. 151, 36 Pac. 368; Daily v. Marshall, 47 Mont. 377, 392, 133 Pac. 681. See California Civil Code, sec. 358; Montana Rev. Codes 1921, sec. 6000.

² People v. Dashaway Assoc., 84 Cal. 114, 12 L. R. A. 117, 24 Pac. 277; California Code of Civil Procedure, sec. 803.

³ San Diego Gas Co. v. Frame, 137 Cal. 441, 445, 70 Pac. 295; Cal. Civil Code, sec. 358.

⁴ State v. Real Estate Bank, 5 Ark. 595, 41 A. D. 109.

⁵ Kaiser Land, etc., Co. v. Curry, 155 Cal. 638, 103 Pac. 341.

§ 966. **Forfeiture of Corporate Franchises.**—As commonly expressed, the franchises of a corporation may be forfeited for misuser or non-user, and the corporation dissolved.⁶ There are four classes of cases in which the question of forfeiture may arise: (1) The charter may provide that, for the failure of the corporation to observe certain express provisions or conditions, the franchises granted should be forfeited, and the corporation dissolved; or (2) the charter may simply impose certain express obligations upon the corporation, without providing in so many words that a violation thereof shall be a cause of forfeiture; or (3) there may be implied conditions resting upon the corporation by virtue of the acceptance of the charter; or (4) the corporation may have violated some general statute or rule of the common law. With regard to the first of these classes, it is of course evident that a cause of forfeiture results if the corporation does not comply with the conditions imposed.⁷

§ 967. **Who May Institute Proceedings for Forfeiture.**—An information in the nature of *quo warranto*, unless otherwise permitted by statute, must be at the instance and on behalf of the state, through its proper officer, and cannot be prosecuted by a private individual.⁸ This is largely because of the power of the state to waive grounds of forfeiture. The proper officer on whose relation the proceedings are instituted is usually the attorney general; the institution of such proceedings comes within the purview of those powers which are inherent in his office.⁹ The attorney general, unless so required by statute, need not ask and obtain leave of court to institute proceedings to declare the forfeiture of corporate franchises;¹⁰ but in some instances by statute he is first required to obtain leave of the court to file the information, and the granting of leave then rests in the sound discretion of the court.¹¹

⁶ Trustees of McIntire Poor School v. Zanesville Canal, etc., Co., 9 Ohio 203, 289, 34 A. D. 440.

⁷ State v. Real Estate Bank, 5 Ark. 595, 601, 41 A. D. 109, 114.

⁸ Bass v. Roanoke, etc., Co., 111 N. C. 439, 16 S. E. 402, 19 L. R. A. 247.

⁹ Chicago Mutual Life Indemnity Assoc. v. Hunt, 127 Ill. 257, 20 N. E. 55, 2 L. R. A. 549.

¹⁰ State v. Webb, 97 Ala. 111, 12 So. 377, 38 A. S. R. 151.

¹¹ State v. Janesville Water Co., 92 Wis. 496, 66 N. W. 512, 32 L. R. A. 391.

§ 968. **Dissolution by Expiration of Charter.**—When the term for which a corporation was organized expires it is thereby dissolved, without any judicial proceeding, unless there is some statutory provision to the contrary.¹² No action on the part of those in charge of the business affairs of a corporation is necessary to effect a dissolution after the expiration of the charter.¹³ If a corporation is authorized by statute to amend its articles so as to reduce the term of existence so that it expires practically at once, a dissolution is in effect produced. Although a voluntary dissolution is the better method of dissolving a corporation, there is nothing in the law to prevent a dissolution by such an amendment where it is authorized by statute.¹⁴

§ 969. **Dissolution of Monopoly Under Anti-Trust Laws.**—Where it is necessary to dissolve a corporation, as a result of a decree of court ordering the dissolution of a monopoly under the Federal Anti-Trust Laws the affairs of the corporation are usually of such an intricate nature that it is difficult to evolve a plan of dissolution which is fair to all of the stockholders. The following circular is an example of a proposal sent by such a corporation to its security holders, as a plan of its disintegration:

§ 970. **Plan for Disintegration of Corporation Dissolved Under an Anti-Trust Law.**

American Tobacco Company,
111 Fifth Avenue, New York.

December 9th, 1926.

By a decree of the circuit court of the United States for the southern district of New York, made and entered on November 16, 1926, in the case of the United States of America vs. the American Tobacco Company and others, a plan of disintegration was approved, which in substance provided among others, as follows: .

¹² *Arlington Hotel Co. v. Rector*, 124 Ark. 90, 186 S. W. 622; *People v. Wayman*, 256 Ill. 151, 99 N. E. 941; *Grand Rapids Bridge Co. v. Prange*, 35 Mich. 400, 24 A. R. 585; *Holter v. Hauser*, 33 Idaho 406, 195 Pac. 628.

¹³ *Murphy v. Missouri, etc., Land, etc., Co.*, 28 N. D. 519, 526, 149 N. W. 957.

¹⁴ *Tognazzini v. Jordan*, 165 Cal. 19, A. C. 1914C 655, 130 Pac. 879; *Nezik v. Cole*, 43 Cal. App. 130, 184 Pac. 523. Section 362 of the California Civil Code was amended in 1915 so that a corporation in California can no longer work a dissolution in the manner outlined above by amending its articles of incorporation. See Stats. 1915, p. 1457, and Stats. 1921, p. 134.

(a) The distribution by the American Tobacco Company to common stock holders of the company of certain stock held by it, the value thereof to be charged against its surplus;

(b) The organization of two new companies to engage in the business of manufacturing and selling tobacco, to be called respectively, Liggett & Myers Tobacco Company, and P. Lorillard Company, and the conveyance by the American Tobacco Company to these companies respectively of certain factories, plants, brands and business, and the capital stocks of tobacco manufacturing corporations, in consideration of seven per cent (7%) bonds, five per cent (5%) bonds, and seven per cent (7%) cumulative preferred stock and common stock, to be issued in payment for said assets by these two companies; and

(c) The sale at par of the common stocks of these two new companies, thus acquired by the American Tobacco Company to its common stock holders pro rata; the exchange of the preferred stocks of these new companies for an equal amount of the existing preferred stock of the American Tobacco Company, the latter to be canceled when thus exchanged; the conferring upon the remaining preferred stock of the American Tobacco Company not thus exchanged, of full voting rights; the exchange of the seven per cent (7%) bonds of these two new companies for an equal amount of the six per cent (6%) bonds of the American Tobacco Company, the latter to be retired; the exchange of the five per cent (5%) bonds of these two new companies, for an equal amount of the four per cent (4%) bonds of the American Tobacco Company, the latter to be retired; and the retirement for cash of six per cent (6%) bonds, and four per cent (4%) bonds of the American Tobacco Company not thus exchanged.

The seven per cent (7%) bonds and the five per cent (5%) bonds of the two new companies to be in the aggregate exactly sufficient in amount for the retirement upon said exchange respectively of one-half ($\frac{1}{2}$) of the existing six per cent (6%) bonds and one-half ($\frac{1}{2}$) of the four per cent (4%) bonds of the American Tobacco Company; and the provisions of the retirement of bonds in cash, to be applicable to the one-half ($\frac{1}{2}$) of the six per cent (6%) bonds, and one-half ($\frac{1}{2}$) of the four per cent (4%) bonds, not entitled to the privilege of exchange, and upon the basis of one hundred and twenty per cent (120%) of the par value of the six per cent (6%) bonds, and ninety-six per cent (96%) of the par value of the four per cent (4%) bonds, with accrued interest in each case.

Under resolution adopted by the board of directors of the American Tobacco Company, pursuant to the said decree, this announcement is made:

DISTRIBUTION OF STOCK TO COMMON STOCK HOLDERS.

Certain stocks now held by the American Tobacco Company will be distributed to common stock holders of the company of record, at the close of business on December 1, 1926. Each of said common stock holders will be entitled to receive upon each share of the common stock, standing in his name December 1, 1926, the following securities (all of which are in shares

of the par value of one hundred dollars (\$100) each, except the shares of British-American Tobacco Company, Limited, which are of the par value of £1 each):

American Snuff Company common stock.....	75908 of a share
	401824
American Snuff Company preferred stock.....	23764 of a share
	401824
George W. Helme Company common stock.....	27602 of a share
	401824
Weyman-Bruton Company common stock.....	27602 of a share
	401824
MacAndrews & Forbes Company.....	21129 of a share
	401824
J. S. Young Company common stock.....	7043 of a share
	401824
The Conley Foil Company stock.....	4950 of a share
	401824
The Johnston Tin Foil and Metal Company stock.....	1800 of a share
	401824
R. J. Reynolds Tobacco Company stock.....	50000 of a share
	401824
Corporation of United Cigars Stores stock.....	60000 of a share
	401824
Porto Rican-American Tobacco Company stock.....	13236 of a share
	401824
British-American Tobacco Company, Limited, ordinary shares (£1 each)	270892 of a share
	401824

Each common stock holder of the American Tobacco Company may in advance ascertain the number of shares that he will be entitled to receive, by multiplying the foregoing fractions by the number of shares of common stock of the American Tobacco Company standing in his name on December 1, 1926.

Certificates of stock will be issued only for whole shares. Each common stock holder will receive stock certificates for the whole number of shares, and warrants for the fraction of shares, to which he is entitled. Such warrants will not entitle the holder thereof to vote, or to receive dividends, but by combining such fractions into whole shares or multiples thereof, the warrants may at any time be converted into stock certificates, at which time the holder thereof will receive accrued dividends, if any.

The shares of stock thus distributed will not carry or entitle the holder to receive any dividend declared thereon prior to January 1, 1927.

All certificates of stock except those of British-American Tobacco Company, Limited, and all warrants for fractions of a share, will be sent to the common stock holders of the American Tobacco Company, or upon their order, as and when the necessary computations can be made, and certificates and warrants issued. For the shares of British-American Tobacco Company, Limited, each common stock holder of the American Tobacco Company will receive instruments of transfer with directions for their proper execution and transmission.

Sale of common stocks of Liggett & Myers Tobacco Company and P. Lorillard Company:

Each common stock holder of the American Tobacco Company of record December 1, 1926, will be entitled to purchase, for cash at par, his proportionate amount of the common stocks of Liggett & Myers Tobacco Company and P. Lorillard Company, to wit, for each share of the common stock of the American Tobacco Company, standing in his name on December 1, 1926, 214964/401824 of a share (of the par value of \$100) of the common stock of Liggett & Myers Tobacco Company, and 151556/401824 of a share (of the par value of \$100) of the common stock of P. Lorillard & Company.

Each common stock holder may ascertain the number of shares that he will be entitled to purchase, by multiplying the foregoing fraction by the number of shares of the common stock of the American Tobacco Company standing in his name on December 1, 1926.

As soon as computations can be made, there will be sent to each common stock holder of the American Tobacco Company of record December 1, 1926, a warrant showing the number of shares of the common stock of Liggett & Myers Tobacco Company, and a separate warrant showing the number of shares of the common stock of P. Lorillard & Company, that he is entitled thus to purchase, for cash at par, which warrants will be assignable. These warrants will provide that payments be made at Guaranty Trust Company of New York, 30 Nassau Street, New York City, on or before January 10, 1927, and that otherwise the said warrants will be valueless and void. These warrants will indicate the number of whole shares and the fraction of a share that each common stock holder of the American Tobacco Company is thus entitled to purchase, but no fraction of a share of Liggett & Myers Tobacco Company, or P. Lorillard Company, will be issued; this company having made arrangements with Guaranty Trust Company of New York to eliminate any fractions of a share by purchase or sale at the option of the holder of the warrant.

Any common stock of Liggett & Myers Tobacco Company, or of P. Lorillard Company, not taken and paid for by the holders of said warrants, in accordance with the foregoing provisions, will be disposed of to other persons.

EXCHANGE OF SECURITIES OF LIGGETT & MYERS TOBACCO COMPANY AND P. LORILLARD COMPANY FOR SECURITIES OF THE AMERICAN TOBACCO COMPANY, AND RETIREMENT OF BONDS OF THE AMERICAN TOBACCO COMPANY.

On and after January 10, 1927, and until the time fixed by said decree, the holders of the six per cent (6%) bonds, the four per cent (4%) bonds, and the six per cent (6%) cumulative preferred stock of the American Tobacco Company, may surrender as security to the Guaranty Trust Company of New York, and receive new securities and cash as follows:

1. Each holder of the six per cent (6%) bonds of the American Tobacco Company may surrender his bond for cancellation, receiving in payment and exchange therefor, seven per cent (7%) bonds of the Liggett & Myers Tobacco Company and P. Lorillard Company, amounting together at par to one-half ($\frac{1}{2}$) of the par value of the bonds so surrendered and cash at the rate of one hundred and twenty dollars (\$120) and accrued interest for each one hundred dollars (\$100) face value of said bonds for the other half of said bonds so surrendered. The date of maturity and interest date of the seven per cent (7%) bonds of the Liggett & Myers Tobacco Company and P. Lorillard Company are the same as the date of maturity and interest date of the six per cent (6%) bonds of the American Tobacco Company.

2. Each holder of the four per cent (4%) bonds of the American Tobacco Company may surrender his bonds for cancellation, receiving in payment and exchange therefor five per cent (5%) bonds of the Liggett & Myers Tobacco Company and of P. Lorillard Company, amounting together at par to one-half ($\frac{1}{2}$) of the par value of the bonds so surrendered, and cash at the rate of ninety-six dollars (\$96) and accrued interest for each one hundred dollars (\$100), face value of said bonds for the other half of said bonds so surrendered. The date of maturity and interest date of the five per cent (5%) bonds of Liggett & Myers Tobacco Company and P. Lorillard Company are the same as the date of maturity and interest date of the four per cent (4%) bonds of the American Tobacco Company.

Adjustment of interest to be made so that each holder of the said six per cent (6%) bonds, or four per cent (4%) bonds shall receive in cash the accrued interest on the bonds so sold and exchanged up to the date of such exchange, less interest accrued during the then pending interest period, on the bonds of Liggett & Myers Tobacco Company and P. Lorillard Company so delivered to him upon such exchange.

3. Each holder of the preferred stock of the American Tobacco Company may surrender his stock for cancellation, receiving in exchange therefor, seven per cent (7%) cumulative preferred stock of Liggett & Myers Tobacco Company and P. Lorillard Company, amounting together at par, to one-third ($\frac{1}{3}$) of the par value of the stock so surrendered, and new certificates for six per cent (6%) cumulative preferred stock of the American Tobacco Company amounting at par to two-thirds ($\frac{2}{3}$) of the par value of the stock so surrendered, and such preferred stock of the American

Tobacco Company to carry full voting rights. Inasmuch as the preferred stock of the American Tobacco Company, and the preferred stock of Liggett & Myers Tobacco Company and P. Lorillard Company have the same dividend payment dates, these exchanges of preferred stock will be without adjustment of interest.

Coupon bonds of Liggett & Myers Tobacco Company and of P. Lorillard Company will be issued in denominations of one thousand dollars (\$1000) and registered bonds in larger denominations, and in denominations of one thousand dollars (\$1000), five hundred dollars (\$500), one hundred dollars (\$100), and fifty dollars (\$50). Shares of preferred stock will be of the par value of one hundred dollars (\$100). Certificates of preferred stock will be issued only for whole shares; and no bond will be issued for a smaller amount than fifty dollars (\$50); but in the exchange, scrip warrants will be delivered for the fraction of a fifty-dollar (\$50) bond, or for the fraction of a share of stock, to which the exchanging party is entitled. Arrangements have been made with Guaranty Trust Company of New York to eliminate such scrip by purchase or sale, at the option of the exchanging party.

The securities of Liggett & Myers Tobacco Company and P. Lorillard Company received by the American Tobacco Company, under the plan, and available for the purposes set forth in this circular, are as follows:

	Liggett & Myers Tobacco Co.	P. Lorillard Company
7% bonds	\$15,507,800	\$10,933,500
5% bonds	15,059,600	10,617,450
7% preferred stock.....	15,383,800 (a)	10,846,000
Common stock	21,496,400	15,155,600
	<hr/>	<hr/>
	\$67,447,600	\$47,552,550

(a) In addition to this P. Lorillard Company will issue six hundred and forty-one thousand six hundred dollars (\$641,600) at par of preferred stock, to take up existing preferred stock of the old P. Lorillard Company, not owned by the American Tobacco Company.

As each class of securities of Liggett & Myers Tobacco Company held by the American Tobacco Company exceeds in amount the corresponding class of securities of P. Lorillard Company, held by the American Tobacco Company in the proportion of 58.65 to 41.35 they will be allotted in the same proportion in exchange for bonds and preferred stock; so that, for example, a person entitled upon an exchange of securities rendered by him, to receive one thousand dollars (\$1000) at par in securities of Liggett & Myers Tobacco Company, and of P. Lorillard Company, would receive five hundred and eighty-six dollars and fifty cents (\$586.50) in a security of Liggett & Myers Tobacco Company and four hundred and thirteen and 50/100 dollars (\$413.50) in a corresponding security of P. Lorillard Company.

Notwithstanding the date, to wit: January 10, 1927, herein set for payment and exchange of bonds, any holder of bonds, who is also a holder of a warrant for the purchase of common stock of Liggett & Myers Tobacco Company and P. Lorillard Company, may make such sale or exchange at

any earlier date, provided that at the same time he applies to the purchase at par of the common stock to which he is entitled, of the Liggett & Myers Tobacco Company or P. Lorillard Company, or both, all the cash received by him in payment for retirement of his bonds.

Temporary certificates of stock and temporary registered bonds will be delivered exchangeable for engraved certificates of stock, and engraved registered and coupon bonds, when and after such engraved certificates and bonds are provided.

To insure proper delivery of stock, instruments of transfer and warrant showing the right to make purchases of stock, the common stockholders of the American Tobacco Company will please fill out and mail to the treasurer of the American Tobacco Company, as indicated, the order herewith enclosed, with their signatures thereto guaranteed by a bank or trust company.

THE AMERICAN TOBACCO COMPANY.
J. M. W. HICKS, Treasurer.

§ 971. Protective Agreement Between Preferred Stock Holders on Involuntary Dissolution of Corporation.

Agreement made this 28th day of July, 1926, between such holders of the preferred stock of the American Tobacco Company, as shall become parties to this agreement, in the manner hereinafter provided (hereinafter called the depositors), parties of the first part, and James N. Wallace, Frederick Strauss, Charles D. Norton, Harry Bronner, and Ernest Iselin (hereinafter called the Committee), parties of the second part.

Whereas, In and by the decision of the supreme court of the United States in the suit brought by the United States of America against the American Tobacco Company (hereinafter called the Tobacco Company) and others, said court directed that proceedings be had for the purpose of ascertaining and determining upon some plan or method of dissolving the combination and in recreating out of the elements now composing it a new condition, which shall be honestly in harmony and not repugnant to the laws without unnecessary injury to the public or the rights of private property; and

Whereas, It is necessary that the holders of the preferred stock of the Tobacco Company, for the protection of their interests, should unite:

Now, Therefore, In consideration of the premises, and of the advantages which will accrue from a union of interests and concert of action, the depositors each for himself, and not for any of the others, do hereby agree with each other, and with the Committee as follows:

1. The Committee is hereby vested under the terms of this agreement as trustees of an expressed trust, with the legal title to all the shares of preferred stock, which may be deposited under this agreement, as hereinafter provided, and the depositors hereby assign, and transfer the same to the Committee. The Committee is fully authorized and empowered in the name of the Committee, as owner or otherwise, at any time, and from

time to time, to take or cause to be taken all such suits, actions, and proceedings, whether legal, equitable, or otherwise, and to do, execute, and perform, any and all such acts and things as it shall deem necessary or proper for the purpose of protecting and enforcing the interests of the holders of the deposited shares of preferred stock, or otherwise, for the purposes of this agreement. The Committee may transfer the deposited shares of preferred stock, or cause the same to be transferred into the name of the Committee or its nominee; may attend all meetings, whether of stockholders, or otherwise, and may vote on all questions which may come up at such meetings, including any amendment of the certificate of incorporation, or by-laws of the Tobacco Company, and the sale or other disposition of all or any part of the assets and property of the Tobacco Company, or of any of its subsidiary, allied, affiliated, or controlled companies, or of any company in which the Tobacco Company is interested as a stockholder, or otherwise; may, as the owner and holder of the deposited shares of preferred stock, take, or institute, or cause to be taken or instituted, or intervene in, or become a party to, or exercise control over such suits, actions, and proceedings, give such directions, execute such papers, and do such acts and things as the Committee shall consider judicious or proper to protect or enforce the rights and interests of the deposited shares of preferred stock; may demand, collect, and receive any and all amounts of cash, shares of stock, bonds, or other securities or property that at any time may be payable or receivable upon or in respect of the deposited shares of preferred stock, whether as dividend or upon any reorganization or readjustment of the Tobacco Company, its affairs and property, pursuant to the decision of the supreme court of the United States above referred to, or otherwise, and may distribute the same pro rata among the depositors subject to the provisions of this agreement, and in accordance with such reasonable regulations as the Committee may prescribe; may make all requests and demands which the Committee may deem proper; may exercise in its uncontrolled discretion, in respect to the deposited shares of preferred stock, all rights and powers vested in, or conferred upon the owners and holders of such shares of stock by the terms thereof, or by the certificate of incorporation or by-laws of the Tobacco Company, or by the laws of the state of New Jersey, or otherwise; and in general may do such acts and things as the Committee in its uncontrolled discretion may deem judicious and proper in order to carry out fully and effectively the purposes of this agreement.

The Committee at any time, and from time to time, may purchase or otherwise acquire, or enter into agreements for the purchase and acquisition of any of its shares of stock, whether preferred or common, or of any of the bonds, obligations, or other securities, or of any of the property of the Tobacco Company, or of any of its subsidiary, allied, affiliated, or controlled companies, or of any other company or corporation now or hereafter organized, as the Committee in its uncontrolled discretion may deem necessary for the protection or advancement of the interests of the depositors; and in exchange therefor, or otherwise, may sell or exchange, or

enter into agreements for the sale or exchange of any of the shares of preferred stock deposited hereunder, or of any shares of stock, bonds, obligations, or other security or any property purchased or acquired by the Committee, for such consideration, and upon such terms and conditions as the Committee in its uncontrolled discretion may deem advantageous and for the interests of the depositors. Any such sale or exchange may provide for the sale or exchange of the deposited shares of preferred stock, or of any interests represented thereby, for cash, or in consideration for shares of stocks, bonds, obligations, or other securities, or property of the Tobacco Company, and, or of any of its subsidiary, allied, affiliated, or controlled companies, or of any other company or corporation now, or hereafter organized, or partly for cash, and partly for any such shares of stock, bonds, obligations, or other securities or property, upon such terms and conditions as the Committee may in its uncontrolled discretion determine, and any such sale or exchange made by the Committee in good faith, shall be final and conclusive upon the depositors.

The Committee may make such expenditures and incur such indebtedness, obligations, and liabilities as the Committee in its uncontrolled discretion may deem judicious or expedient in order to carry out fully and effectively the purposes of this agreement. The deposited shares of preferred stock, and property purchased or acquired by, or on behalf of the Committee shall be charged with the payment of the compensation of the Committee, and its expenses (including as part of the Committee's expenses, wherever its expenses are referred to in this agreement, the compensation and expenses of the depositary and counsel fees), and also with the payment of the indebtedness, obligations, and liabilities of the Committee; but nothing contained in this agreement shall obligate any depositor to contribute or pay any sum of money, except only at his election, as in this agreement provided, in order to withdraw the shares of preferred stock deposited by him when expressly permitted so to do by the terms of this agreement, or to participate in any plan and agreement of reorganization, or to readjustment in case it shall be so provided therein, and otherwise recourse shall be had only against the deposited shares of preferred stock.

The Committee may deal with the property, or any part thereof at any time purchased or acquired by it, or on its behalf under the authority conferred by any of the provisions of this agreement, in like manner as it is hereby authorized to do with, or in respect of the deposited shares of preferred stock, or any of them, and may transfer such property or any part thereof, or cause the same to be transferred into the name of the Committee, or its nominee; may exercise any and all rights, powers, and privileges vested in the owners and holders of the said property as such, and as owners thereof, or otherwise, may take and institute or cause to be taken and instituted, or reintervene in, or become a party to, or exercise control over such suits, actions, or proceedings, whether legal or equitable, give such directions, execute such papers, and do and perform such acts and things, either under the instrument securing the said property, or any part

thereof, or otherwise, as the Committee shall deem judicious or proper, whether to enforce the security provided for any such property, or to secure the payment of the principal or interest or dividends of, or upon any such property, or to protect or enforce the rights and interests of the depositors; may demand, collect, and receive all amounts that at any time may be due or owing, or payable upon or in respect of any such property, and whether for principal or for interest or otherwise; may elect to have the principal of any bond, debenture, notes, or other obligations so acquired by it to become due and payable, and may withdraw any such election; may use any bonds, debentures, notes, or other obligations, or any shares of preferred or common stock, or other property theretofore acquired by, or deposited with the Committee in payment or in part payment of the purchase price thereof; may pledge or charge the purchased property and any property held or acquired by, or on behalf of the Committee, under the authority of any of the provisions of this agreement, or any part or portion thereof, for the purpose of procuring funds to make any such payment, or to obtain such money as may be necessary to discharge prior liens upon property purchased, and to pay the expenses of sale, may exercise all powers, conferred upon the holders of any bonds, debentures, notes, or other obligations, or any shares of preferred or common stock acquired by or deposited with the Committee under the authority of any of the provisions of this agreement, under the terms of the instruments securing the same or otherwise; and may vote, or cause to be voted or otherwise exercise the right of owner upon, or in respect of all shares of stock, whether preferred or common, acquired by the Committee under the authority of any of the provisions of this agreement.

The Committee shall have power and may at any time, and from time to time, at public or private sale, purchase or cause to be purchased, or may contract to purchase, or may in any manner acquire or cause to be acquired, and whether before or after the preparation or the adoption and approval by it of any plan or agreement of reorganization or readjustment of the Tobacco Company, its affairs and property, as hereinafter provided, in accordance with the decision of the supreme court of the United States above referred to, and for such consideration, and upon such terms and conditions, and subject to such restrictions as the Committee in the exercise of its uncontrolled discretion as it may deem expedient, all or any of the shares of preferred or common stock, bonds, obligations, or indebtedness, or all or any part of the property of the Tobacco Company, or of any subsidiary, allied, affiliated, or controlled company of the Tobacco Company, or any other property, which in the judgment of the Committee may be advantageously used by or in connection with the business of the Tobacco Company, or of any of its subsidiary, allied, affiliated, or controlled companies, or any property, the acquisition of which the Committee may deem advantageous or advisable; but the Committee shall not be bound to make any such purchase or contract to purchase, and in case of any purchase the deposited shares of preferred stock, or any of them, may be used in payment, or in part payment of the purchase price thereof, or

the purchased property, or the deposited shares of preferred stock, or any other property acquired by or on behalf of the Committee under any of the provisions of this agreement, may be pledged, or charged for the purpose of procuring funds to make any such payment, or to obtain such money as may be necessary to discharge prior liens on the property purchased, and to pay the expenses of sale.

The Committee may at any time, and from time to time, whether before or after the preparation or adoption and approval by it of any plan or agreement of reorganization or readjustment of the Tobacco Company, its affairs and property, as hereinafter provided, in accordance with the decision of the supreme court of the United States above referred to, in such manner and for such considerations, and upon such terms and conditions as it may in its uncontrolled discretion determine, sell, exchange, assign, set over, or deliver any or all of the property purchased by the Committee under the authority conferred upon it by any of the provisions hereof, and generally may deal with any such property so purchased or acquired hereunder, as it shall deem most advantageous in the interests of the depositors. Any property purchased or acquired by the Committee under the authority conferred by any of the provisions of this agreement, or any part of such property may, after the preparation or adoption and approval of a plan and agreement of reorganization or readjustment by the Committee, as hereinafter provided, be deposited thereunder or otherwise subjected thereto, and be held and disposed of by the Committee, or the manager, under any such plan or agreement in the manner therein provided, and subject to the terms and conditions thereof.

2. The Committee acting either alone, or in conjunction with any other committee of the holders of stock, bonds, or other securities of the Tobacco Company, shall have power, if and whenever in its judgment it shall become advisable so to do, to prepare and adopt a plan and agreement for the reorganization or readjustment of the Tobacco Company, its affairs and property under and in accordance with the decision of the supreme court of the United States, hereinbefore referred to, and including, in the discretion of the Committee, any one or more of the subsidiary, allied, affiliated, or controlled companies, or interest of the Tobacco Company, or any company in which the Tobacco Company is interested as stockholder or otherwise, or the Committee may approve and adopt any plan and agreement for such reorganization or readjustment, although not prepared by it. Any such plan and agreement of reorganization or readjustment may be prepared or approved, and adopted by the Committee either before or after a sale, or a contract for the sale of the property of the Tobacco Company, or any part thereof, and such plan may provide for the exchange or sale of the deposited shares of preferred stock, or any of them, or for the sale or resale of any property or any part thereof, purchased or acquired by it, or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, and the Committee as the agent and attorney of the depositors, or otherwise, may sell, exchange, and deliver all the deposited shares of preferred stock, or any of them,

and all or any part of the property purchased, or acquired by the Committee, and may sell or exchange, assign, transfer, deliver, convey, and set over the property so purchased or acquired, or any part thereof, for the considerations, and otherwise as prescribed or contemplated by such plan and agreement. Any such plan and agreement of reorganization or readjustment may provide for the purchase or acquisition, or for the sale or other disposition of all or any part of the property of the Tobacco Company, or of any one or more of its subsidiary, allied, affiliated, or controlled companies or interests, or of any company in which the Tobacco Company is interested as stockholder or otherwise, at any public or private sale, or for the purchase or acquisition, or for the sale or other disposition of any one or more of the Tobacco Company's subsidiary, allied, affiliated, or controlled companies, or interest, or any company in which the Tobacco Company is interested as stockholder or otherwise, or of any property purchased or acquired as herein authorized to be purchased or acquired by, or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, or any part of such property, and for the readjustment of any indebtedness to which said property or any part thereof may be subject; for the purchase or acquisition of any other property, which in the judgment of the Committee may be advantageous for the preservation, improvement, development, operation, or protection, either of the property of the Tobacco Company, or of any one or more of its subsidiary, allied, affiliated, or controlled companies, or of any other property, the purchase or acquisition whereof may be provided for in, or contemplated or authorized by, any such plan and agreement; for the deposit thereunder of such securities (including in said term indebtedness of every character and shares of stock), and upon such terms and conditions as the Committee may deem expedient; for the organization of such corporation, or corporations as may be deemed suitable, and for the acquisition in any manner by such corporation or corporations, or by the Tobacco Company, or by any other corporation, directly or indirectly, through stock or certificates, representative thereof, or otherwise, of the property of the Tobacco Company, or of any of its subsidiary, allied, affiliated, or controlled companies, or of any portion of such property, or of any other property; for the issue, disposition, and distribution of all or any of the shares of stock of such classes, and of such rights and priorities, and bonds, debentures, notes, and other security, or evidences of indebtedness of any such corporation or corporations, or in lieu of the distribution of shares of stock or security, of certificates representing a beneficial interest therein, and for the raising of any sums in cash deemed by the Committee in its uncontrolled discretion to be necessary or expedient for any of the purposes of reorganization or readjustment of the Tobacco Company, its affairs and properties, in accordance with the decision of the supreme court of the United States above referred to, and may include or recognize as well floating or other indebtedness as any securities of any class (including in said term shares of stock), whether prior or junior to the deposited shares of preferred stock, or any of them, or to the rights of the depositors,

or any of them, or to any property purchased or acquired by or in behalf of the Committee under the provisions of this agreement, or any part thereof, and whether of the Tobacco Company, or of any other company.

Any such plan and agreement may constitute managers of the reorganization or readjustment under it, and provide for their compensation and expenses, and the members of the Committee or any of them, or the members of any other committee of the holders of stock, bonds, or other securities of the Tobacco Company, may act as such managers or may be members of any committee thereby constituted, or therein referred to, and may make provisions for the payment of the compensation and expenses of the Committee, and under such plan and agreement may charge with the payment thereof, as well as of all indebtedness, obligations, and liabilities incurred by the Committee, the shares of stock, securities, and property, or any part of the shares of stock, securities, or property at any time subject to such plan and agreement. Any such plan and agreement may contain any terms and provisions, and confer upon the Committee, or any other committee under such plan and agreement, or, if such plan and agreement shall constitute managers of said reorganization or readjustment, on the managers thereunder, any powers and discretion which the Committee in its uncontrolled discretion may deem proper or expedient, and although not expressed or contemplated in this agreement, and may impose such conditions on participation therein, or in the benefits thereof, as the Committee may, as aforesaid, deem wise; and full power and discretion in these respects is conferred upon the Committee.

Whenever the Committee shall have prepared or approved and adopted any such plan and agreement, a copy thereof shall be filed with the depositary, and thereupon a brief notice of the fact of such preparation or approval and adoption and filing shall be published by the Committee at least twice in each week, for two successive weeks, in "The Sun," and the "New York Times" (newspapers published in the borough of Manhattan, city of New York, N. Y.), or in case said newspapers, or either of them are not then being published, in two other newspapers of general circulation published in the borough of Manhattan, city of New York, N. Y.; and such publication shall be conclusive notice as of the date of its first publication to all the depositors and to all holders of certificates of deposit of the preparation or approval, and adoption of such plan and agreement by the Committee, and of the filing of the copy thereof with the depositary.

Any holder of a certificate of deposit may, within the period of thirty days, commencing on the date of the first publication of such notice of the preparation, or approval and adoption of any plan and agreement by the Committee, upon surrender of the certificate of deposit, with a properly executed transfer thereof to the depositary, and upon the payment of the pro rata share of such sum as the Committee may, in its sole and uncontrolled discretion, fix as a fair contribution for the compensation and expenses of the Committee, not exceeding, however, for such compensation one per cent of the aggregate par value of the deposited shares of preferred stock, and at the election of the Committee upon his reimbursement

also to the Committee of his pro rata share of all the indebtedness, obligations and liabilities of the Committee as fixed by the Committee in its uncontrolled discretion, withdraw from this agreement; and thereupon he shall be entitled to receive shares of preferred stock to the amount represented by his certificate of deposit. Holders of certificates of deposit who do not so withdraw within said period of thirty days, shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal hereby given to them, and such plan and agreement shall be binding on all holders of certificates of deposit who shall not have so withdrawn their deposited shares of preferred stock, all of whom shall be conclusively and finally deemed for all purposes to have assented to the said plan and agreement and the terms thereof, whether they receive actual notice or not, and be irrevocably bound and concluded by the same. No holder of any certificate of deposit shall, at any time prior to the first publication of such notice of the preparation or approval, and adoption by the Committee of a plan of reorganization or readjustment, be entitled to withdraw from this agreement or receive the deposited shares of preferred stock presented by the certificate of deposit held by him, or any of them, except as provided by the next succeeding paragraph of this agreement, and except also in the event of the amendment, or termination of this agreement, as provided by Articles 7 and 8 hereof, and then only subject to the conditions and limitations in said respective articles provided.

In the event that no notice of the preparation or approval and adoption of any plan and agreement of reorganization or readjustment shall be given by the Committee within one year from the date of this agreement by the first publication of such notice within said period of one year from the date hereof, any holder of a certificate of deposit may, after the expiration of said period of one year, withdraw from this agreement upon surrender of his certificate of deposit, with a properly executed transfer thereof to the depository, and upon the payment of his pro rata share of such sum as the Committee may in its sole and uncontrolled discretion, fix as a fair contribution for the compensation and expenses of the Committee, not exceeding, however, for such compensation one per cent of the aggregate par value of the deposited shares of preferred stock, and at the election of the Committee upon his reimbursement, also to the Committee his pro rata share of all indebtedness, obligations and liabilities of the Committee, as fixed by the Committee in its controlled discretion; and thereupon he shall be entitled to receive shares of preferred stock to the amount represented by his certificate of deposit; provided, however, that if any notice of the preparation or approval and adoption of any such plan and agreement of reorganization or readjustment shall be given by the Committee in the manner hereinbefore provided after the expiration of said period of one year from the date of this agreement, no holders of any certificate of deposit who shall not prior to the date of the first publication of such notice have withdrawn from this agreement, as provided in this paragraph shall thereafter be entitled to withdraw from this agreement, except

within the period of thirty days, commencing on the date of the first publication of such notice, as hereinbefore provided.

(3) No enumeration of special powers by any of the provisions of this agreement shall be construed to limit any grant of general powers contained in, or conferred by, any of the provisions hereof.

(4) The Committee, as at any time constituted and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as originally formed. The Committee may from time to time add to its number, by electing by the votes of a majority of its members, as from time to time constituted, an additional member or additional members, and a member or members so elected shall have all the powers of, and together with those herein named, or their successor or successors, shall constitute the Committee under this agreement, with like force and effect as if they were specifically named as parties of the second part. Any member of the Committee may resign by filing written notice of his resignation with the secretary of the Committee, or with the Central Trust Company of New York, the depository. In case at any time a vacancy shall occur in the Committee by death, resignation or otherwise, such vacancy may, but need not be filled by a majority of the other members of the Committee by the selection and appointment of a successor to fill such vacancy, and such successor shall have and may exercise all the powers and authorities under this agreement previously possessed by the person in whose place he shall have been elected or appointed and to the same extent and effect as if he were herein named as one of the Committee.

(5) Holders of the preferred stock of the Tobacco Company may become parties to this agreement by depositing, under the terms of this agreement, within such period as the Committee may from time to time limit for that purpose, with the Central Trust Company of New York, the depository under this agreement, and herein sometimes referred to as the depository, the certificates representing the shares of preferred stock held by them respectively, properly endorsed in blank, and bearing all stock transfer stamps required by the laws of the state of New York. The deposited shares of preferred stock shall be held by the depository subject to the order of the Committee. Neither the depository nor the Committee shall be liable for any action taken in good faith in the belief that any certificate of stock, or other document or signature is genuine, and any loss or liability of the depository, or of the Committee caused otherwise than by bad faith, shall be conclusively deemed to be part of the expenses of the Committee, as herein provided for.

For every such deposit, certificates of deposit issued by the depository in substantially the same form hereto attached and marked Schedule A shall be delivered to the depositors. Said certificates of deposit shall be registered as to ownership in the name of the owner, at the office of the Central Trust Company of New York, or of such other trust company as may be designated by the Committee, as the registrar thereof, and thereafter no transfer thereof shall be valid, except upon the books of said trust company, upon surrender of such certificates properly endorsed. The

deposit of shares of preferred stock and the acceptance of a certificate or certificates of deposit therefor shall have the same force and effect as though depositor had in fact executed this agreement. Upon the transfer of any certificate of deposit the transferee shall for all purposes, be substituted for the prior holder, and the registered holders of the respective certificate of deposit may be treated as the absolute owners thereof, and of all the rights of the original depositor, and neither the Committee nor the depositary shall be affected by any notice to the contrary. The Committee may in its discretion, from time to time, cause the transfer books of the certificates of deposit to be closed for such period or periods as may be expedient. The Committee may from time to time appoint such registrar or registrars of certificates of deposit as it may determine.

(6) The Committee may act by a majority of its members, either at a meeting, or in writing without a meeting. Any member of the Committee may vote or act by proxy (who may, but need not be another member of the Committee), and the vote or act of such proxy shall be as effective as the vote or act of such member appointing such proxy. The Committee may limit or extend the time within which, and fix the conditions under which deposits may be made under this agreement, and may impose penalties in respect to deposits received, after such limit shall have expired, and either generally or in special instances may in its discretion, after the time limit has expired, accept deposits of preferred stock or otherwise obtain the assent of the holders of any preferred stock to this agreement, and the terms and conditions thereof. The Committee shall have the power to employ such depositaries, counsel attorneys, agents or employees, as in its judgment shall be necessary or useful, and shall be entitled to a reasonable compensation for its services. Neither the Committee, nor any of its members, nor the depositary, shall be personally liable for any act or omission of any agent, attorney or employee selected in good faith, nor for any error of judgment, or mistake of law, nor for anything other than willful malfeasance. The depositary in all things hereunder shall be subject to the directions of, and responsible to the Committee alone. No member of the Committee shall be liable for the act or acts of any other member, nor for anything but his own willful malfeasance. For the purpose of securing funds necessary for the payment of the expenses and liabilities of the Committee, or to pay liens, charges or assessments upon, or in respect to, or otherwise to protect the property, or any portion thereof, at any time purchased or acquired by, or in behalf of the Committee, under the authority conferred by any of the provisions of this agreement, or the deposited shares of preferred stock, the Committee may borrow money, and pledge their security for the repayment thereof of the deposited shares of preferred stock, and any property purchased or acquired by or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, or any part or portion of said shares of the preferred stock and property; and if any sum shall be collected by the Committee upon the deposited shares of preferred stock, the Committee may apply such moneys

to the payment of any sum so borrowed, and to the payment of its compensations, expenses, obligations and liabilities.

Any member of the Committee and any firm or corporation of which he may be a member or officer, and the depositary, its officers and agents, may be or become pecuniarily interested in any property or matters which are or may become the subject of this agreement, or of any plan and agreement of reorganization or readjustment, which the Committee may prepare, or approve, and adopt as herein provided, and make contract with the Committee, or be a member or manager of any other committee, or of any syndicate which may contract with the Committee, or be formed in contemplation of, or in connection with, any plans and agreement of reorganization or readjustment of the Tobacco Company, its affairs and property, under and in pursuance of the decision of the supreme court of the United States, hereinbefore referred to.

Upon the termination of this agreement, and after the payment in full of the compensations and expenses of the Committee, and also of all its indebtedness, obligations, and liabilities, the money or other property acquired by, or in behalf of, the Committee, and not previously or simultaneously sold, contracted to be sold, or otherwise disposed of by the Committee, shall be distributed pro rata, among the holders of the outstanding certificates of deposit issued under this agreement, in accordance with such reasonable regulations as the Committee may prescribe, and upon surrender to the depositary of their respective certificates of deposit properly endorsed in blank.

(7) The Committee is hereby authorized and empowered to construe this agreement, and its construction of the same made in good faith shall be final, conclusive, and binding upon the depositors and upon the holders of all certificates of deposit. It may supply defects and omissions herein, or may make such modifications as in its judgment may be expedient, or necessary to carry out the same properly and effectively, and its judgment as to such expediency or necessity, shall be final. The Committee shall have power whenever in its judgment it may be advisable, to amend this agreement. All amendments shall be filed with the depositary; and if in the judgment of the Committee, which shall be conclusive and binding, any such amendment shall materially affect the rights of holders of certificates of deposit, notice of such filing shall be given by publication twice in each week for two successive weeks, in "The Sun" and the "New York Times" (newspapers published in the borough of Manhattan, city of New York, N. Y.), or in case said newspapers or either of them are not then published, in two other newspapers of general circulation published in the borough of Manhattan, city of New York, N. Y. Any holder of a certificate of deposit may at any time within two weeks after the first publication of such notice, upon the surrender of his certificate of deposit, properly endorse in blank to the depositary, and upon payment of his pro rata share of such sum as the Committee may in its sole and uncontrolled discretion fix as a fair contribution toward the compensation and expenses of the Committee, but not exceeding, however, one per cent of the aggregate par

value of the deposited shares of preferred stock, and upon his reimbursement also to the Committee of his pro rata shares of all the indebtedness, obligations and liabilities of the Committee, withdraw from this agreement, and thereupon he shall be entitled to receive shares of preferred stock to the amount represented by his certificate of deposit. Holders of certificates of deposit so withdrawn shall upon such withdrawal, without any further act, be fully relieved from the obligations of this agreement and shall cease to have any rights hereunder. Holders of certificates of deposit who do not so withdraw within said period of two weeks, shall be conclusively and finally deemed for all purposes irrevocably bound and concluded by all such amendments, and whether or not they receive actual notice of such amendments, or the filing thereof.

(8) If for any reason the Committee shall consider it expedient at any time to terminate this agreement, it may do so, giving like notice of its election so to do as hereinbefore provided in respect of the amendment of this agreement. In the event of such termination of this agreement, holders of certificates of deposit upon payment of the compensation and expenses of the Committee, not exceeding, however, for such compensation, one per cent of the aggregate par value of the deposited shares of preferred stock, and upon reimbursement also to the Committee of the pro rata share of such certificates of deposit of all indebtedness, obligations and liabilities incurred by the Committee shall, on surrender of their certificates of deposit, properly endorsed in blank to the depository, be entitled to the delivery of shares of preferred stock to the amount represented by their certificates of deposit.

(9) Holders of certificates of deposit by the receipt of any shares of stock, securities, cash or other property distributed by the Committee, and the surrender of their certificates of deposit, thereby release and discharge the Committee and the depository from all liability and accountability of every kind, character and description whatsoever.

(10) An original counterpart of this agreement shall be signed by the Committee, or a majority of them, and be deposited with Central Trust Company of New York, the depository. By receiving a certificate of deposit issued by the depository, any recipient or holder thereof shall thereby become and be a party to this agreement, and be bound by its provisions with the same force and effect as though an actual subscriber hereto. The Committee by the execution and delivery of this agreement is not under any obligation, legal or equitable, expressed or implied, to any holder of preferred stock who shall not deposit his shares of stock hereunder, nor to any person whomsoever, other than the holders of certificates of deposit issued in accordance with the terms of this agreement.

In Witness Whereof, The members of the Committee, or a majority of them have subscribed this agreement, as of the day and year first above

written, and the parties of the first part have deposited their shares of preferred stock, and have accepted certificates of deposit therefor.

J. N. WALLACE.
FREDERICK STRAUSS.
CHARLES D. NORTON.
HENRY BRONNER.
ERNEST ISELIN.

SCHEDULE A.

Certificate of Deposit of Preferred Stock of the American Tobacco Company.

Deposited under an agreement dated July 28, 1926, by and between J. N. Wallace, Frederick Strauss, Charles D. Norton, Harry Bronner and Ernest Iselin, Committee, and preferred stockholders of the American Tobacco Company, as parties hereto.

The Central Trust Company of New York, hereby certifies that it has received from shares of stock, as above stated, in trust, subject to the terms and conditions of, and deliverable as stated in the above mentioned agreement. The holder hereof assents to, and is bound by the provisions of said agreement, by receiving this certificate, and is entitled to receive all the securities, benefits and advantages to which the depositor of such shares is or may become entitled, pursuant to the provisions of said agreement.

The interest represented by this certificate is assignable, subject to the terms and conditions of said agreement, by transfer upon books kept by this company for that purpose, by the holder hereof in person, or by attorney, upon the surrender of this certificate, duly endorsed for transfer.

New York,, 19...

CENTRAL TRUST COMPANY OF NEW YORK.

By.....

President.

.....

Assistant Secretary.

(Reverse.)

For value received, hereby sell, assign, and transfer unto the within certificate, and all rights and interests represented thereby, and do hereby irrevocably constitute and appoint attorney to transfer the same on the books of the said trust company, with full power of substitution in the premises.

Dated, 19...

In Presence of

.....(L. S.)

.....

§ 972. Voluntary Dissolution of a Corporation.—A method for the voluntary dissolution of corporations is provided for by statute in most states.¹⁵ Where the statute prescribes a particular

¹⁵ See statutory provisions of particular state.

method, that method must be pursued.¹⁶ And an attempt on the part of stockholders to dissolve without following the statutory method will be ineffectual.¹⁷ Statutory provisions for voluntary dissolution are not violative of the constitutional inhibition against the impairment of the obligation of contracts, since the debts of a corporation are not vacated by its dissolution.¹⁸

§ 973. Preliminary Steps in Voluntary Dissolution.—The board of directors must call a special meeting of the stockholders or members, stating in the notice the fact that it is proposed to take steps looking to the dissolution of the corporation. The resolution of the directors calling the stockholders' meeting may be as follows:

§ 974. Resolution Calling Meeting to Consider Proposition to Dissolve.

Whereof, This corporation has entirely ceased to do the business for which it was formed and organized; and whereas, all indebtedness has been paid, and it appearing to be to the best interests of the stockholders that it should be dissolved, its business terminated and its remaining assets distributed among the stockholders, or otherwise disposed of according to law:

Therefore, Resolved, That a special meeting of the stockholders of the Hanford Oil Company be and is hereby called, to be held at the office of said corporation, at Room Building, in the city of, state of, on the 29th day of June, 1927, at the hour of 10 o'clock a. m., for the purpose of considering and acting upon a proposition to dissolve said corporation, wind up its business and dispose of its assets.

And the secretary is hereby authorized to give notice of said meeting by publishing notice thereof in the, a daily and weekly newspaper published in said city, once each week for at least two weeks prior to the date of said meeting, and by mailing a copy of said notice to each of the stockholders whose names appear on the company's books, in the manner provided in the by-laws for giving notices for special meetings of the stockholders.

The published notice of the stockholders' meeting may be as follows:

¹⁶ *Elliott v. Superior Court*, 168 Cal. 727, 145 Pac. 101; *People v. President & Trustees, etc., of California College*, 38 Cal. 166.

¹⁷ *Coler v. Tacoma R., etc., Co.*, 65 N. J. Eq. 347, 54 Atl. 413, 103 A. S. R. 786.

¹⁸ *Crossman v. Vivlenda Water Co.*, 150 Cal. 575, 89 Pac. 335.

§ 975. Published Notice of Stockholders' Meeting to Consider Proposition to Dissolve.

Pursuant to a resolution duly offered and adopted by the board of directors of the New Era Printing Company at a regular meeting of said board, held at the office of said corporation the 10th day of June, 1927, and entered in the minute book of said corporation as part of the proceedings of said meeting, notice is hereby given that a meeting of the stockholders of said corporation is hereby called, and will be held at the office of said corporation, at Room Building, in the city of, state of, on the 29th day of June, 1927, at the hour of 10 o'clock a. m., for the purpose of considering and acting upon the proposition to dissolve the said corporation, wind up its business and dispose of its assets.

J. F. WESTON,
Secretary of said Corporation.

§ 976. Stockholders' Meeting to Consider Dissolution.—At the meeting of the stockholders there should be passed a resolution in the following form:

RESOLUTION OF STOCKHOLDERS TO APPLY FOR DISSOLUTION.

Whereas, All debts of, and all claims against, this corporation have been satisfied and discharged, and all the purposes for which said corporation was organized have been fulfilled, and said corporation is desirous of being dissolved;

Now, Therefore, Be It Resolved, That this corporation be dissolved, and that the board of directors of this corporation make application to the court of the county of, state of, for the dissolution of this, to wit: the Hanford Oil Company, a corporation.

If, however, the debts of the corporation have not as yet been paid, the resolution should be modified accordingly. The directors should then proceed to pay the debts, and pass the following resolution:

§ 977. Resolution of Directors Pursuant to Authority From Stockholders to Dissolve.

Whereas, On the 29th day of June, 1927, the stockholders of this corporation, in special meeting assembled, upon due notice published and given to each and every stockholder, according to law and the by-laws of this corporation, the Hanford Oil Company, passed and adopted, by a two-thirds vote of the subscribed capital stock, a resolution that immediate steps be taken for the dissolution of this corporation and the distribution of its assets remaining after all indebtedness, including costs and expenses incurred in carrying out said resolution, are fully paid, and it appearing that all existing indebtedness has been fully paid;

Therefore, Resolved, That the president and secretary be, and they are hereby, authorized and directed to cause to be prepared by a competent attorney, or attorneys, to be by them employed on behalf of this corporation for that purpose, a proper petition to the proper court, praying for the dissolution of this corporation and to prosecute the proceeding to be instituted by the filing of said petition to final judgment.

Resolved, Further, That, upon the procuration of a preliminary order favorable to the petitioners, said costs and expenses of said proceeding, including a reasonable attorney's fee, to be agreed upon between said president and secretary and said attorney, or attorneys, be paid out of the assets of this corporation, and that the remaining assets be forthwith distributed pro rata by the said president and secretary; that in making such distribution they require from the stockholders proper receipts and acquittances, in full, for their respective shares of the assets of this corporation and the surrender of their certificates of shares in the capital stock of this corporation, properly endorsed, to be held by the president and secretary for cancellation, upon the entry of a final decree of dissolution.

§ 978. Application for Dissolution of a Corporation.—The statutes of some states provide that a corporation may be dissolved by the superior court of the county where its principal place of business is situated, upon its voluntary application for that purpose.¹⁹ Such application must be in writing, and must set forth: (1) That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a vote of two-thirds of the members or of the holders of two-thirds of the subscribed capital stock; (2) that all claims and demands against the corporation have been satisfied and discharged.²⁰ In order to accomplish a dissolution it is a legal prerequisite that the debts of the corporation be paid.¹ The application for voluntary dissolution must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.²

¹⁹ California Code of Civil Procedure, sec. 1227; *Huey v. Patterson*, 37 Cal. App. 335, 174 Pac. 939; Idaho Comp. Stats. 1919, sec. 7397; Montana Rev. Codes 1921, sec. 9922.

²⁰ California Code of Civil Procedure, sec. 1228; *In re Balfour & Garrette*, 14 Cal. App. 261, 111 Pac. 615.

¹ *Dammann v. Hydraulic Clutch Co.*, 45 Cal. App. 511, 187 Pac. 1069.

² California Code of Civil Procedure, sec. 1229; Montana Rev. Codes 1921, sec. 9924.

§ 979. Form of Petition for Dissolution of a Corporation.

To the Honorable the Court of the County of, State of

The petition of the Company represents and alleges:

1. That it is a corporation duly incorporated on the day of, 19..., and is still existing, under and by virtue of the laws of the state of, and that its principal place of business is in the county of

2. That at a meeting of the stockholders of said corporation, held for such purpose, the dissolution of said corporation was resolved upon by a vote of two-thirds ($\frac{2}{3}$) of all the stockholders of said corporation.

3. That all claims and demands against said corporation have been fully satisfied and discharged.

4. That the total number of shares of the capital stock of said corporation is thousand (.....); that thousand (.....) shares of the said capital stock of said corporation were duly represented at said meeting called as aforesaid, at the office of said company, in said county, for the purpose of the dissolution of said corporation, on the day of, 19...; and that the vote of all the stockholders at said meeting was as follows: thousand (.....) shares, represented by stockholders as aforesaid, were for dissolution, and shares were against dissolution.

5. That the board of directors or trustees of said corporation consists of three, all stockholders thereof, and residents of said county of, and their names are as follows:,, and; and that said persons so named as trustees aforesaid have had the sole management of the affairs of said corporation for ten months next preceding this application, and are now such managers.

Wherefore, Your petitioners pray that your Honor will, after publication of notice of this application, proceed to hear and determine the same; and, after hearing, adjudge and declare said corporation dissolved, in accordance with the law in such cases made and provided.

FRANK G. DRUM,
JOHN MARTIN,
GEORGE K. WEEKS,

Majority of Directors of Company.

.....

Attorney for Petitioner.

State of, County of, ss.

Frank G. Drum, John Martin and George K. Weeks, a majority of directors of Company, a corporation, being duly sworn, each for himself, deposes and says: That he has read the foregoing petition for dissolution of Company, and knows the contents thereof, and that the same is true of his knowledge, except as to those matters which

are therein stated upon his information or belief, and as to those matters that he believes it to be true.

FRANK G. DRUM.

JOHN MARTIN.

GEORGE K. WEEKS.

Subscribed and sworn to before me, this 29th day of September, 1927.

SID S. PALMER,

Notary Public in and for the County of,
State of

§ 980. Filing Application and Publication of Notice.—Upon the filing of the application, the clerk must give notice of the same for such time as the court may order, but not less than thirty nor more than fifty days, by publication in some newspaper published in the county; or if there be no newspaper published therein, then by notices posted in three of the principal public places in the county.³ No order of dissolution of a corporation can be entered until the notices required have been published or posted in the manner prescribed.⁴ The provisions of the statute as to notice are not unconstitutional in providing that the only notice required is by publication.⁵

§ 981. Order of Court Setting Date for Hearing of Application for Dissolution.

In the Court of the State of, in and for the County of

In re Application for Dissolution of Hanford Oil Company (a corporation).

On reading the petition of the Hanford Oil Company for disincorporation of said company, and praying, among other things, that a time and place be fixed for the hearing of said petition, and that the clerk of of this court be directed to publish notice thereof and of the nature of said application, now, on motion of, attorneys for said petitioner, it is ordered that said petition be filed with the clerk of this court, and that Monday, the 22nd day of August, 1927, at the opening of the court on that day, or as soon thereafter as counsel can be heard, at the courtroom of Department, in and for the county of, state of, be and the same are hereby fixed as the time and place for the hearing of said petition, and the clerk is directed to cause publication thereof, and of the

³ California Code of Civil Procedure, sec. 1230; Idaho Comp. Stats. 1919, sec. 7400; Montana Rev. Codes 1921, sec. 9925.

⁴ Security Sav., etc., Co. v. Piper, 4 Idaho 463, 40 Pac. 144.

⁵ Crossman v. Vivienda Water Co., 150 Cal. 575, 89 Pac. 335.

nature of the application in said petition made, to be published not less than thirty (30) days nor more than fifty (50) days preceding said date, in the, a newspaper published in said city and county.

Dated 30th day of June, 1927.

....., Judge.

§ 982. Notice of Application for Voluntary Dissolution of Corporation.

In the Court of the State of, in and for the County of

In re Application for Dissolution of Hanford Oil Company (a corporation)—No.

Notice is hereby given that the Hanford Oil Company, a corporation, organized under the laws of the state of, has presented to the superior court of the county of, a petition praying to be allowed to disincorporate and dissolve, and that, the 22nd day of August, 1927, at ten (10) o'clock in the forenoon, or as soon thereafter as counsel can be heard, has been appointed as the time, and the courtroom of Department of the court, in and for the county of, state of, as the place at which said application is to be heard.

Given under my hand and the seal of the court of the county of, state of, this 30th day of June, 1927.

(Seal.)

....., Clerk.

By Deputy Clerk.

§ 983. **Objections May Be Filed.**—At any time before the expiration of the time of publication of the notice of the dissolution of a corporation any person may file his objections to the application.⁶ The purpose of an opposition is to show that all claims and demands against the corporation have not been satisfied and discharged, and thus prevent a decree of the court from declaring it dissolved. A contingent liability constitutes a claim or demand which will interrupt the voluntary dissolution of a corporation.⁷ One cannot object as a stockholder where it appear that he was not a stockholder at the time of the dissolution.⁸

⁶ California Code of Civil Procedure, sec. 1231; Idaho Comp. Stats. 1919, sec. 7401; Montana Rev. Codes 1921, sec. 9926.

⁷ In re Balfour & Garrette, 14 Cal. App. 261, 111 Pac. 615.

⁸ Matter of College Hill Land Assoc., 157 Cal. 596, 108 Pac. 681.

§ 984. Form of Objections to Application.

In the Court of the State of, in and for the County of

In re Application for Dissolution of Company (a corporation).

Now comes, a claimant for damages and a creditor of said Company, and files his objections to the application of said company to dissolve.

The objection is that all claims and demands against said corporation have not been satisfied and discharged, and particularly the claim of him, the said, for damages, has not been satisfied or discharged, and an action at law has been commenced by him, and said, to recover said damages, to wit, the sum of dollars (\$.....), for injuries received through the default and negligence of said corporation, which occasioned an explosion of gas, and consequent damages to said, as set forth in the complaint in said action which has been served upon the defendant; and said action is now pending in the court of the county of, state of

Wherefore, He, the said, respectfully prays that said application may be denied.

Filed, 19...
(To be verified.)

.....
(Signature)

§ 985. **Hearing of Application for Dissolution.**—After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true must declare the corporation dissolved.⁹

§ 986. Form of Decree of Dissolution of Corporation.

In the Court of the State of, in and for the County of

In re Application for Dissolution of Hanford Oil Company (a corporation).

The voluntary application for dissolution of the Hanford Oil Company, a domestic corporation, coming on regularly this day for hearing and determination, the court finds:

I.

That on June 30, 1927, in accordance with the order of the judge of this court, the said Hanford Oil Company filed with the clerk of said court its application for its dissolution of incorporation.

⁹ California Code of Civil Procedure, sec. 1232; Idaho Comp. Stats. 1919, sec. 7402; Montana Rev. Codes 1921, sec. 9927.

II.

That in accordance with the order of the judge of this court, the clerk of said court has given thirty (30) days' notice of said application for dissolution by publication in the, a newspaper of general circulation, printed and published in said county of, which thirty (30) days' notice and said publication thereof was completed and expired on the 4th day of August, 1927.

III.

That no objection to said application for dissolution has at any time been filed herein.

IV.

That all the allegations and statements in said application for dissolution made are true, and to this court, by the evidence introduced herein, have been shown so to be.

Wherefore, It Is Ordered, Adjudged and Decreed, That said corporation, Hanford Oil Company, be, and the same hereby is, and is declared to be dissolved;

And it further appearing to the court, from the evidence introduced herein, that the board of directors of said corporation under its articles of incorporation, consisted of seven (7) members, and does now consist of seven (7) members, namely:

Frank G. Drum,
John Martin,
Eugene J. de Sabla, Jr.,
George K. Weeks,

George W. Lewis,
Cyrus Peirce,
Frank D. Stringham.

And it also appearing to the court that the capital stock of said corporation is divided into twenty thousand (20,000) shares, and said shares are now owned and held as follows:

4,482½ shares owned by Frank G. Drum.
4,482½ shares owned by John Martin.
4,482½ shares owned by Eugene J. de Sabla, Jr.
6,022½ shares owned by N. W. Halsey & Co.
10 shares owned by George K. Weeks.
10 shares owned by George W. Lewis.
10 shares owned by Frank D. Stringham.
500 shares owned by Cyrus Peirce.

20,000

It Is Hereby Ordered and Decreed, That said Frank G. Drum, John Martin, Eugene J. de Sabla, Jr., George K. Weeks, George W. Lewis, Cyrus Peirce, and Frank D. Stringham are entitled to be, and by the court are herein appointed, trustee for the stockholders of said corporation, with power and direction to settle all the affairs of said corporation, and to distribute and convey all the property of said corporation to each of said

stockholders, in proportion to the number of shares owned and held by said stockholders, when such distribution and conveyance shall be made.

Dated August 24, 1927.

.....
Judge of the Court.

§ 987. Form of Decree of Dissolution. [Another Form.]

In the Court of the State of, in and for the County of

In re Application for Dissolution of Company (a corporation).

The voluntary application for dissolution of the Company, a domestic corporation, coming on regularly this day for hearing and determination, the court finds:

1. On, 19..., the said Company filed with the clerk of said court its application for its dissolution as a corporation.

2. In accordance with the order of the judge of this court, the clerk of said court has given thirty days' notice of said application for dissolution, by publication in the, a newspaper of general circulation printed and published in said county of, which thirty days' notice, with said publication thereof, was completed and expired on, 19...

3. No objection to said application for dissolution has at any time been filed herein.

4. All the allegations and statements in said application for dissolution made are true, and to this court, by the evidence introduced herein, have been shown so to be.

Wherefore, It Is Ordered, Adjudged and Decreed, That said corporation, the Company, be, and the same hereby is, and is declared to be, dissolved.

Done in open court this day of, 19...

.....
Judge of said Court.

§ 988. Filing Certified Copy of Decree of Dissolution With Secretary of State.—A certified copy of the decree and order of the court dissolving the corporation must be filed in the office of the secretary of state and in the office of the county clerk of each county in which the original articles of incorporation, or a certified copy thereof, is required by law to be filed.¹⁰

¹⁰ California Code of Civil Procedure, sec. 1232.

§ 989. Certificate of Clerk to Decree of Dissolution of Corporation.

State of California, County of Sacramento, ss.

I, Wm. B. Hamilton, county clerk and ex-officio clerk of the superior court, do hereby certify the foregoing to be a full, true and correct copy of the original decree of dissolution of Nippon Savings Bank, on file in my office and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the superior court, this 30th day of September, 1927.

WM. B. HAMILTON,
County Clerk.

By E. F. PFUND, Deputy Clerk.

(Seal.)

§ 990. Directors to Be Trustees of Dissolved Corporation.

—Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, collect and pay outstanding debts, sell the assets thereof in such manner as the court shall direct, and distribute the proceeds of such sales and all other assets to the stockholders. Such trustees shall have authority to sue for and recover the debts and property of the corporation, and shall be jointly and severally personally liable to its creditors and stockholders or members, to the extent of its property and effects that shall come into their hands.¹¹

Under the proceedings outlined in the foregoing sections for the voluntary dissolution of a corporation, a corporation may not be dissolved without proving that all claims and demands have been satisfied and discharged. However, if the corporation be dissolved by the court's judgment and still have any creditors who had not objected to the dissolution in the proceeding for that purpose, they are still afforded a remedy for the protection and judicial ascertainment of their claims against the corporation.¹² It is the duty of the trustees to distribute whatever surplus assets of the corporation may remain after paying the debts, to the stockholders or members according to their respective shares. If, at the time of liquidation, some of the shareholders have paid for their shares

¹¹ California Civil Code, sec. 400.

¹² In re Balfour v. Garrette, 14 Cal. App. 261, 270, 111 Pac. 615.

in full, and some have paid only in part or not at all, and a surplus is left after paying the debts of the company, those who have paid in full are entitled to such an adjustment out of the surplus as will place all the shareholders on an equality, prior to any payments being made to the delinquent shareholders.¹³

§ 991. Determination of Who Are Trustees.—In some states it is provided that where, on dissolution, the identity of the directors or managers at the time of dissolution shall not be otherwise judicially established, any person interested in the assets at the time of dissolution may bring a proceeding in the superior court by petition setting forth certain specific matters, and by such petition request that a decree be entered establishing the identity of the persons who were such directors or managers at the time of dissolution and for an order appointing successors to any who may be dead or unable to act; or, if it is impossible to determine the identity of all or any of such directors or managers, then for an order appointing trustees in their places. The procedure to be followed upon such an application is usually prescribed.¹⁴

§ 992. Receipt, Ratification, and Release From Stockholders Upon Dissolution.—Upon the payment to each stockholder or member, the directors or receivers should take care to secure his written receipt. If it be necessary to dispose of real estate or other important holdings, it is well that the receipt should be somewhat in the nature of a reiteration of a consent to dissolution and a ratification of the acts of the receivers or directors. Such may be in the following form:

Know All Men by These Presents:

That, Whereas, By certain resolutions passed and adopted by the stockholders of the Hanford Oil Company, a corporation, and by resolutions adopted respectively on the day of, and the day of, 1926, the directors of said corporation were directed to make sale and disposition of the property of said corporation, and distribute its capital and assets among the stockholders, with a view to the voluntary dissolution of said corporation, and said board of directors have fully performed their duties in the premises, in substantial compliance, and in accordance with the resolutions aforesaid, and do now, as well for their own protection as for the better assurance of title to the real prop-

¹³ Krebs v. Carlisle Bank, 2 Wall. Jr. (U. S.) 33.

¹⁴ California Civil Code, sec. 402.

erty sold and disposed of by them, request from the stockholders of said corporation a formal ratification of their several acts, and acquittance from all liability in the premises;

Now, Therefore, We, the undersigned, being all of the stockholders of the said Hanford Oil Company, and being fully advised in the premises, do hereby respectively declare, acknowledge and agree that we have each received from the board of directors and from the members of said board, individually and collectively, our full proportionate respective shares of all the property of said corporation constituting its capital, and the proceeds thereof, as assets upon dissolution, remaining after payment of all corporate indebtedness, expenses and costs; that the distribution of said assets has been fairly and equitably made, and we do, individually and collectively, hereby assent to, ratify and confirm each and all the sales, transfers, conveyances, contracts, agreements, proceedings and actions, made, executed, entered into, had or done, by the said board of directors, or their predecessors in office, or by any officer, or officers of said corporation, from its organization to the present time, and especially since the first proceedings had, with a view to a voluntary dissolution of said corporation.

And, In consideration of the receipt by each of us of our several respective shares of the proceeds of the sales and transfers hereinafter described, and all other benefits accruing to us by reason of said sales and transfers, and without intending thereby to exclude from our affirmance and ratification any other acts done by said directors or officers, we do, and each of us does, hereby particularly assent to, ratify and confirm the sales, transfers and conveyances following, that is to say:

(Here describe any tract or tracts of land that may have been sold and conveyed, as that of the corporation, and specify the office, book and page of recordation.)

And we do, and each of us does, hereby release, acquit, and forever discharge the said directors and officers of said corporation, individually and collectively, their heirs, executors and assigns, of and from all claims and demands whatsoever which we now have, or could hereafter have, against them, or any of them, by reason of their acts or omissions as such directors or officers, and especially in the matter of the winding up of the business of said corporation, and distribution of its assets.

Dated, the day of, 1927.

(Signed) Names of all stockholders by
whom assets received.

Where no real estate is involved, or the title is beyond question, and there is no probability of any future dispute, a simpler and shorter receipt may be taken, as follows:

§ 993. Receipt From Stockholders on Dissolution (Short).

We, the undersigned, constituting all the stockholders of the Hanford Oil Company, a corporation, now in process of being wound up and dissolved, hereby acknowledge that we, and each of us, have received from

said corporation our proper and just distributive shares of the property and assets of said corporation.

(Signed.)

Names.

§ 994. Effect of Dissolution of Corporation.—The effect of the dissolution of a corporation, except as otherwise provided by statute, is to terminate its existence as a legal entity;¹⁵ whether the dissolution be voluntary,¹⁶ or involuntary.¹⁷ After a corporation has been finally dissolved, whether by lapse of time, by judicial proceeding, or by any other method or cause, it can exercise no right and maintain no proceeding of itself or in its name, and conceding such right to exist and such proceeding to be maintainable, it must be prosecuted by or in the name of the person or persons beneficially interested, or by or in the name of persons authorized by statute.¹⁸

The property of the former corporation belongs to the stockholders as tenants or owners in common if all debts have been paid and no receiver has been appointed.¹⁹ However, the dissolution of a corporation does not affect a right theretofore vested in third persons through the corporation, such as the right of trustees in a corporate mortgage to take possession and control of the property and carry on the business.²⁰ Nor is a lease terminated by the dissolution of the corporation.¹ After its dissolution no action can be instituted against a corporation.² Nor has a corporation any capacity to sue.³

§ 995. Appointment of Receiver Upon Dissolution of Corporation.—In many states statutes provide that a court upon the dis-

¹⁵ *Los Angeles, etc., Land Co. v. Marr*, 187 Cal. 126, 200 Pac. 1051.

¹⁶ *Crossman v. Vivienda Water Co.*, 150 Cal. 575, 89 Pac. 335.

¹⁷ *Hanson v. Choynski*, 180 Cal. 275, 180 Pac. 816.

¹⁸ *MacRae v. Kansas City Piano Co.*, 69 Kan. 457, 77 Pac. 94; *Bradley v. Reppell*, 133 Mo. 545, 54 A. S. R. 685, 32 S. W. 645, 34 S. W. 841.

¹⁹ *Cumington Realty Associates v. Whitten*, 239 Mass. 313, 132 N. E. 42, 17 A. L. R. 527.

²⁰ *Nelson v. Hubbard*, 96 Ala. 238, 11 So. 428, 17 L. R. A. 375.

¹ *Re Mullings Clothing Co.*, 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539; *Kalkhoff v. Nelson*, 60 Minn. 284, 62 N. W. 332.

² *Marion Phosphate Co. v. Perry*, 74 Fed. 425, 41 U. S. App. 14, 20 C. C. A. 490, 33 L. R. A. 252.

³ *Bradley v. Reppell*, 133 Mo. 545, 32 S. W. 645, 34 S. W. 841, 54 A. S. R. 685.

solution of a corporation may appoint a receiver to take possession of the property of the corporation and wind up its affairs.⁴ Courts are not, however, authorized before dissolution to appoint a receiver to take charge of the business and property of a corporation, dispose of its assets and wind up its affairs.⁵ The general statutory provisions, of many states, concerning the appointment of receivers for corporations, usually provide that a receiver may be appointed by the court in which an action is pending in the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.⁶

The superior court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or members thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.⁷ An appointment cannot be made unless some party interested, either a creditor or stockholder, can show that, for the protection of his rights, a receiver and administration of the assets under the control and superintendency of a court of equity are necessary.⁸ And even then no receiver will be appointed upon his *ex parte* application without requiring ample security by undertaking with sufficient sureties for all damages that may be caused by the appointment if it shall turn out that it was made without sufficient cause.⁹

⁴ See statutory provisions of particular state.

⁵ *Elliot v. Superior Court*, 168 Cal. 727, 145 Pac. 101.

⁶ California Code of Civil Procedure, sec. 564.

⁷ California Code of Civil Procedure, sec. 565.

⁸ *People v. Union Building, etc., Assoc.*, 127 Cal. 400, 58 Pac. 822, 59 Pac. 692.

⁹ *Havemeyer v. Superior Court*, 84 Cal. 327, 18 A. S. R. 192, 10 L. R. A. 627, 24 Pac. 121. The appointment of a receiver on an *ex parte* application is so dangerous an expedient that it should be done only in cases of the greatest emergency, and where, without such appointment, irreparable injury will unquestionably result. *A. G. Col Co. v. Superior Court*, 196 Cal. 604, 238 Pac. 926.

CHAPTER LVII.

FOREIGN CORPORATIONS.

- § 996. What Are Foreign Corporations.
- § 997. Rights and Powers of Foreign Corporations.
- § 998. Effect of Carrying on Whole Business Outside State of Creation.
- § 999. Equal Protection of Laws.
- § 1000. Privileges and Immunities of Citizens.
- § 1001. Power of State to Exclude, Restrict, or Regulate Foreign Corporations.
- § 1002. Retaliatory Legislation—In General.
- § 1003. Filing Copy of Articles of Incorporation by Foreign Corporation.
- § 1004. Penalty for Failure to File Copy of Articles of Incorporation.
- § 1005. Designation of Agent for Process.
- § 1006. Form of Designation of Agent for Process.
- § 1007. Rights of Foreign Corporations Filing Designation.
- § 1008. Effect of Non-Compliance With Conditions.
- § 1009. Mode of Proving Authority to Do Business Within State.
- § 1010. Right to Impose License Tax or Fee on Foreign Corporation.
- § 1011. Revocation of Right to Do Business.
- § 1012. Liability of Stockholders of Foreign Corporation as Partners.
- § 1013. Residence of Domesticated Foreign Corporation.
- § 1014. Mere Licensing to Do Domestic Business Does Not Make Company a Domestic One.
- § 1015. What Constitutes Doing Business—In General.
- § 1016. Single or Isolated Transactions.
- § 1017. Installing Article Sold as Part of Contract of Sale.
- § 1018. Soliciting Subscriptions or Selling Stock as Doing Business Within the State.
- § 1019. Soliciting Trade as Doing Business Within the State.
- § 1020. Actions Against Foreign Corporations.
- § 1021. Transfer of Causes From State to Federal Courts.
- § 1022. Affidavit of Service Upon Foreign Corporation.
- § 1023. Return, and Certificate of Service Upon Foreign Corporation.
- § 1024. Liability to Suit After Ceasing to Do Business Within State.
- § 1025. Jurisdiction of Action Involving Internal Affairs.
- § 1026. Jurisdiction of Action Involving Payment of Dividends.
- § 1027. Right to Issue Attachment Against Foreign Corporation.
- § 1028. Appointment of Receiver for Foreign Corporation.
- § 1029. Annual Report by a Foreign Corporation.
- § 1030. Petition for Reinstatement of Charter.
- § 1031. Substitution of Agent of a Foreign Corporation.
- § 1032. Acceptance of Statutory Provisions.
- § 1033. Certificate of Withdrawal.
- § 1034. Certificate of President to Articles of Incorporation.

§ 996. **What Are Foreign Corporations.**—A foreign corporation within the meaning of statutes regulating the terms and conditions upon which such corporations may transact business in the state, is a corporation organized under the laws of another state, territory, or foreign country, from which it derives its existence.¹ Where one state creates a corporation of a given name, and the legislature of an adjoining state declares that the same legal entity shall be or become a corporation of that state as well, and be entitled to exercise within its borders, by the same board of directors and officers, all of its corporate functions, the result of such legislation is not to create a single corporation, but two corporations of the same name, having a different paternity. Such a corporation is not a foreign corporation but a domestic corporation in each of the two states.²

§ 997. **Rights and Powers of Foreign Corporations.**—A foreign corporation has no legal existence beyond the bounds of the state or sovereignty by which it was created, and can exercise none of the functions and privileges conferred by its charter in any other state or country except by comity and consent.³ It has no absolute right to recognition in other states,⁴ but must dwell in the place of its creation and cannot migrate to another sovereignty.⁵ Where comity or the laws of another state permit, a foreign corporation may operate entirely in such state and there exercise its franchises and functions.⁶

In general, however, it may be said that the principle of comity, which is a part of the voluntary law of nations, extends to, and is enforced by, the courts in every nation and every state of the union until destroyed by the law-making power.⁷ This comity is not of

¹ California Stats. 1917, p. 371; *Ulmer v. St. Petersburg First Nat. Bank*, 61 Fla. 460, 466, 55 So. 405; *In re Grand Lodge A. O. U. W.*, 110 Pa. 613, 616, 1 Atl. 582.

² *Missouri Pacific R. Co. v. Meeh*, 69 Fed. 753, 16 C. C. A. 510, 30 L. R. A. 250, 252.

³ *People v. Alaska Pacific S. S. Co.*, 182 Cal. 202, 187 Pac. 742; *Duke v. Taylor*, 37 Fla. 64, 19 So. 172, 53 A. S. R. 232, 31 L. R. A. 484.

⁴ *London, etc., Bank v. Aronstein*, 117 Fed. 601, 54 C. C. A. 663.

⁵ *Booth v. Weigand*, 28 Utah 372, 79 Pac. 570.

⁶ *Tropico Land, etc., Co. v. Lambourn*, 170 Cal. 33, 148 Pac. 206.

⁷ *Helena Power Transmission Co. v. Spratt*, 35 Mont. 108, 85 Pac. 773, 10 A. C. 1055, 8 L. R. A. (N. S.) 567.

the courts but of the legislature, and it takes an act of positive legislation to keep a foreign corporation out of the state.⁸ It is not necessary, however, that a state should by express enactment exclude foreign corporations in order to indicate that they shall not be allowed to act within its jurisdiction; the will of the state may be implied from its general policy and legislation, and whenever a state sufficiently indicates that contracts which derive their validity from its comity are repugnant to its clear public policy, or are considered as injurious to its interest, the presumption in favor of its adoption can no longer be made.⁹

§ 998. Effect of carrying on Whole Business Outside State of Creation.—

The weight of authority is to the effect that a foreign corporation is not rendered powerless by the mere fact that none of its business is carried on in the state of its creation. This rule is predicated upon the assumption that the corporation is legally organized in the state of its creation and for lawful purposes.¹⁰ And it has been held that the fact that the evident object of forming a corporation in a state other than that where the business is actually carried on was to obtain the benefit of less rigorous laws does not defeat the right of such corporation to assert its rights in the latter state, at least where the local authorities have recognized it and the state is not the complaining party.¹¹ However, it is very generally agreed that it is indispensable that a corporation, seeking to invoke the doctrine of comity, should first be possessed of some right, power, or privilege in the country of its domicile,¹² and that no rule of comity compels a foreign state to grant greater recognition and privileges to a corporation than are accorded to it by the state under which it was formed.¹³ Consequently, a foreign corporation which

⁸ *People v. Continental Beneficial Assoc.*, 280 Ill. 113, 117 N. E. 482.

⁹ *Seamans v. Temple Co.*, 105 Mich. 400, 63 N. W. 408, 55 A. S. R. 457, 28 L. R. A. 430.

¹⁰ *State ex rel. Brown Contracting & Bldg. Co. v. Cook*, 181 Mo. 596, 80 S. W. 929; *Moxie Nerve Food Co. v. Baumbach*, 32 Fed. 205; *Hanna v. International Petroleum Co.*, 23 Ohio St. 622.

¹¹ *Cumberland Teleg. & Teleph. Co. v. Louisville Home Teleph. Co.*, 114 Ky. 892, 72 S. W. 4; *Oakdale Mfg. Co. v. Garst*, 18 R. I. 484, 23 L. R. A. 639, 49 A. S. R. 784, 28 Atl. 973.

¹² *Myatt v. Ponca City Land, etc., Co.*, 14 Okla. 189, 78 Pac. 185, 68 L. R. A. 810.

¹³ *Demarest v. Flack*, 128 N. Y. 205, 28 N. E. 645, 13 L. R. A. 854.

is not allowed to do any business in the state which grants the charter, but is created with power to engage in business only in other states, will not be recognized in another state, but will be regarded as a fraud.¹⁴

§ 999. Equal Protection of Laws.—A corporation although organized under the laws of another state, is a “person,” within the meaning of the fourteenth amendment of the constitution of the United States, providing that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.¹⁵ But foreign corporations are not “within the jurisdiction” of a state other than that which created them, within the meaning of those words as employed in section one of the fourteenth amendment until they have fulfilled the conditions authorizing their admission into such state.¹⁶ However, when a foreign corporation has once engaged in domestic business, the state may not exercise its powers of exclusion or regulation to the destruction of the property of the corporation or of its vested constitutional rights.¹⁷ It is then entitled to the equal protection of the laws, and to as favorable treatment as a domestic corporation.¹⁸

§ 1000. Privileges and Immunities of Citizens.—A corporation is not a “citizen” within the meaning of the federal constitution—article IV, section 2—declaring that “the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states,” or within the meaning of the fourteenth amendment of the constitution declaring that no state shall make or enforce any law which shall abridge the privileges or immunities of

¹⁴ *Empire Mills v. Alston Grocery Co.*, 4 Tex. App. Civ. Cas. (Willson) 346, 12 L. R. A. 366, 15 S. W. 505.

¹⁵ *Southern R. Co. v. Greene*, 216 U. S. 400, 412, 30 S. Ct. 287, 54 L. Ed. 536; *Johnson v. Goodyear Minn. Co.*, 127 Cal. 4, 59 Pac. 304, 78 A. S. R. 17, 47 L. R. A. 338.

¹⁶ *Blake v. McClung*, 172 U. S. 239, 19 S. Ct. 165, 43 L. Ed. 432; *Floyd v. National Loan, etc., Co.*, 49 W. Va. 327, 87 A. S. R. 805, 54 L. R. A. 536, 38 S. E. 653.

¹⁷ *H. K. Mulford Co. v. Curry*, 163 Cal. 276, 125 Pac. 236.

¹⁸ *State v. Blake*, 241 Mo. 100, 144 S. W. 1094, A. C. 1913C 1283.

citizens of the United States.¹⁹ Consequently a state may discriminate between its own corporations and those of other states.²⁰

§ 1001. Power of State to Exclude, Restrict, or Regulate Foreign Corporations.—Subject to constitutional limitations, a state may prescribe the terms upon which a foreign corporation may carry on business within its territory. Having no absolute right of recognition, it follows as a matter of course that assent to the admission of such corporations and to the doing of business by them may be granted upon such terms and conditions as the state may think proper to impose.¹ The state may entirely exclude a foreign corporation not engaged in interstate commerce, or may admit it conditionally and subject it to such restrictions as the legislature may prescribe.² A state may discriminate between its own corporations and those of other states, or it may discriminate between kinds of foreign corporations.³

§ 1002. Retaliatory Legislation — In General. — In a great number of states a burden has been imposed on foreign corporations by what is commonly known as retaliatory legislation, which, in effect, provides that when any corporation organized under the laws of any of the several states seeks to enter the jurisdiction of another state, the same taxes, licenses, fees, and conditions shall be imposed on it as are exacted or imposed on the corporations of the latter state on entering the jurisdiction of the former state.⁴ Such legisla-

¹⁹ *Diamond Glue Co. v. U. S. Glue Co.*, 187 U. S. 611, 23 S. Ct. 206, 47 L. Ed. 328; *Blake v. McClung*, 172 U. S. 239, 19 S. Ct. 165, 43 L. Ed. 432; *Walters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 20 S. Ct. 518, 44 L. Ed. 657; *State v. Blake*, 241 Mo. 100, 144 S. W. 1094, A. C. 1913C 1283.

²⁰ *Pembina Consolidated Silver Min., etc., Co. v. Pennsylvania*, 125 U. S. 181, 8 S. Ct. 737, 31 L. Ed. 650; *Shannon v. Georgia State Building, etc., Assoc.*, 78 Miss. 955, 30 So. 51, 84 A. S. R. 657, 57 L. R. A. 800.

¹ *Interstate Amusement Co. v. Albert*, 239 U. S. 560, 36 S. Ct. 168, 60 L. Ed. 439; *H. K. Mulford Co. v. Curry*, 163 Cal. 276, 125 Pac. 236; *State v. Hodges*, 114 Ark. 155, 168 S. W. 942, L. R. A. 1916F 122.

² *San Francisco v. Liverpool, etc., Ins. Co.*, 74 Cal. 113, 5 A. S. R. 425, 15 Pac. 380; *Riddell v. Rochester German Ins. Co.*, 35 R. I. 45, 85 Atl. 273.

³ *Pacific Building Co. v. Hill*, 40 Ore. 280, 67 Pac. 103, 91 A. S. R. 477, 56 L. R. A. 163.

⁴ *Philadelphia Fire Assoc. v. New York*, 119 U. S. 110, 7 S. Ct. 108, 30 L. Ed. 342; *People v. New York Fidelity, etc., Co.*, 153 Ill. 25, 38 N. E. 752,

tion has been violently opposed as unconstitutional, principally on the ground that it amounts to a delegation of legislative power, and confers on the legislatures of other states the power to fix the rate of taxation that shall prevail in the state enacting the statute. The validity of such legislation with the exception of one jurisdiction,⁵ has been upheld.⁶ The purpose of such legislation when adopted by a state is to treat the corporation of another state seeking to transact business in the forum precisely as such other state would treat the former's corporations seeking to do business there, and it rests on the idea that the comity due from one state to another is not required to be more than equal and reciprocal, and what is wholly a matter of privilege may be granted or withheld on conditions.⁷ Though the ultimate object of such legislation is to secure reciprocity, its immediate object is to retaliate on the companies of a given state for dis-favors shown to domestic companies in such state; consequently it is penal in character and must be strictly construed, and not applied to a case that does not fairly fall within its letter.⁸

§ 1003. Filing Copy of Articles of Incorporation by Foreign Corporation.—In most states, every foreign corporation which is doing business in the state, or is maintaining an office therein, must file in the office of the secretary of state a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state, or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and a certified copy thereof, duly certified by the secretary of state, in the office of

26 L. R. A. 295; *Blackmer v. Royal Ins. Co.*, 115 Ind. 291, 17 N. E. 580; *State v. New York Fidelity, etc., Co.*, 77 Iowa 648, 42 N. W. 509; *Clay v. Dixie Fire Ins. Co.*, 169 Ky. 337, 183 S. W. 529.

⁵ *Clark v. Mobile*, 67 Ala. 217.

⁶ *Home Ins. Co. v. Swigert*, 104 Ill. 653; *State v. Insurance Co. of North America*, 115 Ind. 257, 17 N. E. 574, *People v. Philadelphia Fire Assoc.*, 92 N. Y. 311, 44 A. R. 380.

⁷ *Talbott v. New York Fidelity, etc., Co.*, 74 Md. 536, 22 Atl. 395, 13 L. R. A. 584.

⁸ *State v. New York Fidelity, etc., Ins. Co.*, 49 Ohio St. 440, 443, 31 N. E. 658, 34 A. S. R. 573, 16 L. R. A. 611.

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the county clerk of the county where its principal place of business is located, and also where such corporation owns property.⁹

§ 1004. Penalty for Failure to File Copy of Articles of Incorporation. — It is often provided that a foreign corporation which neglects to comply with the conditions of such a law is generally subject to a heavy fine, to be recovered in any court of competent jurisdiction. It is frequently made the duty of the secretary of state, or some other officer, when he learns that corporations are doing business in contravention of such a law, to report the fact to the attorney general who is required as soon as practicable, to institute proceedings to recover such fine. In addition to such a penalty, it is often provided that every contract made by or in behalf of any such foreign corporation affecting the personal liability thereof or relating to property within the state is void in its behalf and in behalf of its assigns, but is made enforceable against it or them by the other party.¹⁰

§ 1005. Designation of Agent for Process. — Practically all states provide by statute that every corporation other than those created by or under the laws of the state must file with the secretary of state a designation of some person residing within the state upon whom process issued by authority of law may be served as the representative, for such purpose, of such corporation. A copy of such designation certified by the secretary of state is sufficient evidence of the appointment of such representative. Such process may be served on the person so designated, or, in the event that no such representative is designated, then on the secretary of state, and such service is a valid and binding service on such corporation. Any designation may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within a certain time after the death or removal from the state of any person designated by the corporation, or after the revocation of the desig-

⁹ California Stats. 1917, p. 371, as amended Stats. 1923, p. 1034, Henning's General Laws, 3d Ed., Act 1041, p. 434. See *Diamond Glue Co. v. United States Glue Co.*, 187 U. S. 611, 23 S. Ct. 206, 47 L. Ed. 328; *Woolfort v. Dixie Cotton Oil Co.*, 77 Ark. 203, 91 S. W. 306, 113 A. S. R. 139, 7 A. C. 217.

¹⁰ California Stats. 1917, p. 371, as amended Stats. 1923, p. 1034, Henning's General Laws, 3d Ed., Act 1041, p. 434.

nation, the corporation must make a new designation, or be subject to certain penalties.¹¹

§ 1006. Form of Designation of Agent for Process.

Know All Men by These Presents, That the Crescent Gold Mining Company, a corporation formed and organized under the laws of the State of Nevada, and carrying on business in the state of California, hereby designates James Wilson, residing at Room 630, Chronicle Building, in the city and county of San Francisco, state of California, as the person upon whom process issued by authority of or under any law of the state of California may be served.

In Witness Whereof, The said company hereby affixes its corporate seal and subscribes the names of its president and secretary, this 25th day of September, A. D. 1926.

(Seal.)

CRESCENT GOLD MINING COMPANY.,

By JAMES ADAMS, President.

JOHN FORSYTHE, Secretary.

§ 1007. Rights of Foreign Corporations Filing Designation.

—A corporation which complies with such a law is thereafter entitled to the benefit of the laws of the state limiting the time for the commencement of civil actions, but no foreign corporation is entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of the state until it has complied with such laws. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of the state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases.¹²

§ 1008. Effect of Non-Compliance With Conditions.—Many states provide by statute that a foreign corporation which has not complied with the law as to the filing of copies of its articles and

¹¹ California Stats. 1917, p. 371, as amended Stats. 1923, p. 1034, Henning's General Laws, 3d Ed., Act 1041, p. 434. See *Commercial Mutual Acc. Co. v. Davis*, 213 U. S. 245, 29 S. Ct. 445, 53 L. Ed. 782; *Reyer v. Odd Fellows Fraternal Acc. Assoc.*, 157 Mass. 367, 32 N. E. 469, 34 A. S. R. 288.

¹² California Stats. 1917, p. 371, as amended Stats. 1923, p. 1034, Henning's General Laws, 3d Ed., Act 1041, p. 434.

designation of an agent is not entitled to maintain or defend in the courts of the state any action or proceeding concerning its property or any intrastate business or transaction.¹³ Other states do not go so far but merely deny the right to maintain any suit or action in the courts of the state.¹⁴

A provision of a statute that a corporation shall not "maintain" any action does not deny to it the right to "commence" an action for the protection of its property or the enforcement of its rights, for to maintain an action is not the same as to commence one, but implies that the action has already been commenced.¹⁵

Where a statute does not render void a contract made in a state by a foreign corporation before it has complied with the conditions imposed for doing business therein, but merely denies the right to maintain an action thereon in the courts of the state, it is within the power of such corporation at any time after commencement of the action to comply with the statute and thereafter maintain it.¹⁶ However, if such a contract is made void, either by express provisions of the statute or under the construction placed upon such statute by the courts, subsequent compliance with the statute will not enable the corporation to maintain an action thereon.¹⁷ When only the right to maintain and not the right to defend an action is taken away, a foreign corporation is not prevented from defending an action brought against it.¹⁸

§ 1009. Mode of Proving Authority to Do Business Within State.—When a statute expressly provides how the authority of a

¹³ *Kimball Co. v. Read*, 43 Cal. App. 342, 185 Pac. 192. See, also, statutory provisions of particular state.

¹⁴ See statutory provisions of particular state. See *National Fertilizer Co. v. Fall River Five Cents Sav. Bank*, 196 Mass. 458, 82 N. E. 671, 14 L. R. A. (N. S.) 561, 13 A. C. 510; *United Lead Co. v. J. W. Reedy El. Mfg. Co.*, 222 Ill. 199, 78 N. E. 567, 6 A. C. 637.

¹⁵ *Ward Land, etc., Co. v. Mapes*, 147 Cal. 747, 82 Pac. 426.

¹⁶ *Woolfort v. Dixie Cotton Oil Co.*, 77 Ark. 203, 91 S. W. 306, 113 A. S. R. 139, 7 A. C. 217; *Black v. Vermont Marble Co.*, 1 Cal. App. 718, 82 Pac. 1060; *North Mercer Natural Gas Co. v. Smith*, 27 Ind. App. 472, 61 N. E. 10.

¹⁷ *Hayes v. West Virginia Oil, etc., Co.*, 183 Ky. 622, 210 S. W. 174; *Tri-State Amusement Co. v. Forest Park Highlands Amusement Co.*, 192 Mo. 404, 90 S. W. 1020, 111 A. S. R. 511, 4 L. R. A. (N. S.) 688, 4 A. C. 808.

¹⁸ *Swift v. Platte*, 68 Kan. 1, 72 Pac. 271, 74 Pac. 635; *Billmeyer Lumber Co. v. Merchants' Coal Co.*, 66 W. Va. 696, 26 L. R. A. (N. S.) 1101, 66 S. E. 1073.

foreign corporation to do business in the state shall be evidenced, and no other method is provided, the statutory method is the only available one.¹⁹ But where the statute which prescribes the terms upon which foreign corporations shall do business in a state, merely, either expressly or impliedly, directs the issuance of a certificate of authority to do business, such certificate is the best, and at least *prima facie* evidence of such authority, and must be received by the courts when the question of the right to do business is raised; it not being necessary to produce the papers filed by the corporation, with the certification of the officer with whom they were filed.²⁰ However, there is authority to the effect that the production of the certificate of the officer in whose office the necessary papers are filed, authorizing a foreign corporation to do business in the state, is a sufficient showing of such right, and this without reference to statutory authority to issue such a certificate.¹ Thus a license or certificate, issued by the secretary of state to a foreign corporation, allowing it to do business in the state, is sufficient proof of its authority to so transact business.²

§ 1010. Right to Impose License Tax or Fee on Foreign Corporation.—Since a state has the power to prescribe the conditions on which a foreign corporation may enter and do local business, it may impose on such a corporation a license tax or fee for the privilege of doing business within the state.³ However, such a corporation cannot be compelled to pay a license tax or fee to a state for the privilege of carrying on interstate commerce.⁴ But a state may impose a license tax or fee on a foreign corporation engaging in both interstate and intrastate business, provided the tax or fee is

¹⁹ *Watkins Medical Co. v. Martin*, 132 Ark. 108, 200 S. W. 283, 2 A. L. R. 1230.

²⁰ *Western Union Telegraph Co. v. State*, 82 Ark. 302, 101 S. W. 748, 12 A. C. 82; *Gutzeit v. Pennie*, 95 Cal. 598, 30 Pac. 836.

¹ *Southern Lumber Co. v. Holt*, 129 La. 273, 55 So. 986.

² *People v. Forster*, 280 Ill. 486, 117 N. E. 761.

³ *Hirschfield v. McCullaugh*, 64 Ore. 502, 130 Pac. 1131.

⁴ *Sault Ste. Marie v. International Transit Co.*, 234 U. S. 333, 34 S. Ct. 826, 58 L. Ed. 1337, 52 L. R. A. 574. See, *Alpha Portland Cement Co. v. Moss*, 268 U. S. 203, 218, 44 A. L. R. 1219, 45 S. Ct. 477, 69 L. Ed. 916.

imposed on the intrastate business and does not burden interstate business or tax property beyond the jurisdiction of the state.⁵

§ 1011. Revocation of Right to Do Business.—While the right of a foreign corporation to do business in the state is a mere privilege, such privilege should not arbitrarily be canceled. The right of ouster is somewhat in the nature of a legal discretion, and should not be exercised without cause. However, when a foreign corporation is usurping its corporate powers or violating the law, or doing acts in contravention of the established policy of the state, it may in proceedings brought for that purpose be ousted from the state. Thus, the payment of dividends by a foreign corporation from the proceeds of the sales of its stock, and not from the earnings, where in violation of the local statutes and the policy of the state, is sufficient ground for ousting a corporation from the state.⁶

§ 1012. Liability of Stockholders of Foreign Corporation as Partners.—It has been held that stockholders of a foreign corporation, attempting to do business as such in a state without having attempted to comply with the statutory requirements relating to foreign corporations, are liable on their contracts as partners, although such contracts are made in the name of the corporation, and notwithstanding the stockholders did not know of such non-compliance, since the corporation was without power to contract, and as the stockholders could not bind it, they necessarily bound themselves.⁷

It has also been held that the members of a company incorporated

⁵ *Baltic Min. Co. v. Massachusetts*, 231 U. S. 68, 34 S. Ct. 15, 58 L. Ed. 127; *Marconi Wireless Tel. Co. v. Commonwealth*, 218 Mass. 553, 106 N. E. 310. The authorized capital of a company cannot be used as a foot rule for the measurement of an excise or privilege tax. *Perkins Manufacturing Co. v. Jordan* (1927), 73 Cal. Dec. 384, 254 Pac. 551. See, also, *Alpha Portland Cement Co. v. Moss*, 268 U. S. 203, 213, 44 A. L. R. 1219, 45 S. Ct. 477, 69 L. Ed. 916.

⁶ *State ex rel. Spillman v. Bricton Mfg. Co.*, 113 Neb. 781, 205 N. W. 246, 41 A. L. R. 992, 996.

⁷ *Equitable Trust Co. v. Central Trust Co.*, 145 Tenn. 148, 239 S. W. 171; *Cunningham v. Shelby*, 136 Tenn. 176, 188 S. W. 1147, L. R. A. 1917B 572. See, also, *Taylor v. Branham*, 35 Fla. 297, 17 So. 552, 39 L. R. A. 362, 48 A. S. R. 249; *Loverin v. McLaughlin*, 161 Ill. 417, 44 N. E. 99; *Guckert v. Hacke*, 159 Pa. 303, 28 Atl. 249.

in one state, who go to another state and organize by electing a board of directors, a president, and a general manager without becoming incorporated under the laws of the latter state, where they assume to conduct in their corporate capacity the business of the corporation, are liable as partners upon a debt there contracted. This is on the theory that there can be no organization of a corporation in one state under a charter obtained in another to do business there.⁸ This is especially true if there is fraud in the organization in the foreign state, the statutes of which do not permit the incorporation of a company whose entire business is to be conducted in another state; or, if the purpose is to conduct a business in a state where such business could not be conducted by a corporation.⁹ However, where a corporation is regularly formed in one state, its stockholders cannot be held liable as partners where it has been carrying on business in another.¹⁰ This is especially true where the policy of the state is to give foreign corporations the right to do business upon complying with certain conditions.¹¹

According to the weight of authority the failure of a foreign corporation to comply with the laws of the state in which it is doing business relative to foreign corporations does not render the stockholders liable as partners.¹² At any rate, the partnership relation will not be extended to liabilities not arising by reason of the conduct of the business prohibited from being transacted without a permit.¹³

§ 1013. Residence of Domesticated Foreign Corporation.—

As a general rule, a corporation has its legal existence in the state which created it, and is incapable of passing beyond its boundaries.¹⁴ It cannot change its residence, but must dwell and have its sole legal

⁸ *Taylor v. Branham*, 35 Fla. 297, 17 So. 552, 39 L. R. A. 362, 48 A. S. R. 249.

⁹ *Cleaton v. Emery*, 49 Mo. App. 345; *Lynch v. Perryman*, 29 Okla. 615, 119 Pac. 229, A. C. 1913A 1065; *Empire Mills v. Alston Grocery Co.*, 4 Tex. App. 346, 15 S. W. 505, 12 L. R. A. 366.

¹⁰ *Boyington v. Van Etten*, 62 Ark. 63, 35 S. W. 622.

¹¹ *Merrick v. Van Santvoord*, 34 N. Y. 208.

¹² *Bond v. Stoughton*, 26 Pa. Super. Ct. 483; *Stephenson v. Dodson*, 36 Pa. Super. Ct. 343; *National Bank v. Spot Cash Coal Co.*, 98 Ark. 597, 136 S. W. 953; *Tribble v. Halbert*, 143 Mo. App. 524, 127 S. W. 618.

¹³ *A. Leschen & Sons Rope Co. v. Mozer* (Tex. Civ. App.), 159 S. W. 1018.

¹⁴ *Canada Southern R. Co. v. Gebhard*, 109 U. S. 527, 3 S. Ct. 363, 27 L. Ed. 1020.

home in the state where it was chartered.¹⁵ It may be allowed to transact its business outside of the home state, but it does not, by doing so, acquire a residence elsewhere.¹⁶

A statute requiring a foreign corporation which desires to carry on business in the state to designate a place within the state as its chief office therein, and to procure a permit from the secretary of state, does not give a corporation of another state which complies with its terms a local domicile as a domestic corporation.¹⁷ This is the established rule, but nevertheless, to a limited extent and for certain purposes, a foreign corporation domesticated in another state may have a residence in such state, regardless of its technical citizenship and domicile in the state of its origin.¹⁸

§ 1014. Mere Licensing to Do Domestic Business Does Not Make Company a Domestic One.—Every corporation, unless the law or its charter forbids, may be permitted to transact corporate business beyond the limits of its own state.¹⁹ A mere grant of privileges or powers to a foreign corporation, without more, does not make it a domestic one. Thus, the mere consent of a state to the extension within its territory of the line of a foreign railroad corporation and to the carrying on of the business of such railroad within the state, does not make the railroad company a domestic corporation.²⁰ The purchase by a foreign railroad company of the railroad and franchises of a domestic one, and the acquisition by statute of authority to have, use, and enjoy them and the rights, powers, and privileges of its vendor subject to all the latter's duties and liabilities, make it, in respect of what it has thus acquired, a domestic corporation in its vendor's home state.¹

¹⁵ *Ex parte Schollenberger*, 96 U. S. 369, 24 L. Ed. 853.

¹⁶ *Galveston H. & S. A. R. Co. v. Gonzales*, 151 U. S. 496, 14 S. Ct. 401, 38 L. Ed. 248.

¹⁷ *Coca Cola Co. v. Allison*, 52 Tex. Civ. App. 54, 113 S. W. 308.

¹⁸ *Gaunt v. Nemours Training Corp.*, 194 App. Div. 668, 186 N. Y. Supp. 92; *Stonega Coke & Coal Co. v. Southern Steel Co.*, 123 Tenn. 428, 131 S. W. 988, 31 L. R. A. (N. S.) 238.

¹⁹ *Galveston H. & S. A. R. Co. v. Gonzales*, 151 U. S. 496, 38 L. Ed. 248, 14 S. Ct. 401.

²⁰ *Pennsylvania R. Co. v. St. Louis A. & T. H. R. Co.*, 118 U. S. 290, 30 L. Ed. 83, 6 S. Ct. 1094.

¹ *Clark v. Barnard*, 108 U. S. 436, 27 L. Ed. 780, 2 S. Ct. 878.

§ 1015. What Constitutes Doing Business — In General. — Statutes have been enacted in most jurisdictions requiring foreign corporations to comply with certain conditions before doing, transacting, carrying on, or engaging in business, within the state. Under these statutes the question arises, what constitutes “doing business” by such a corporation. There is no satisfactory or comprehensive definition of what constitutes doing business.² The general rule is that a corporation must, to come within the provisions of such statutes, transact some substantial part of its ordinary business by its officers or agents selected for that purpose.³

§ 1016. Single or Isolated Transactions. — In most jurisdictions it has been held that the action of a foreign corporation in entering into one contract or transacting an isolated business act in the state does not constitute doing business within the meaning of such statutes where there is no corporate continuity of conduct in that respect.⁴ In those exceptional cases which announce the doctrine that the doing of a single act may bring the corporation within the purview of such statutes, it is generally held that the single act must be an act of the ordinary business of the corporation, that is, the doing of some of the things, or an exercise of some of the functions for which the corporation was created.⁵ However, the doing of a single act of business is prohibited according to the construction placed by some courts on such statutes.⁶

² *Knapp v. Bullock Tractor Co.*, 242 Fed. 543.

³ *General R. Signal Co. v. Virginia*, 246 U. S. 500, 38 S. Ct. 360, 62 L. Ed. 854; *Davenport v. Superior Court*, 183 Cal. 506, 191 Pac. 911; *Equitable Loan, etc., Assoc. v. Peed*, 52 N. E. 201; *Osborne v. Shilling*, 74 Kan. 675, 88 Pac. 258, 11 A. C. 319; *Marconi Wireless Tel. Co. v. Commonwealth*, 218 Mass. 558, 106 N. E. 310, A. C. 1916C 214.

⁴ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 5 S. Ct. 739, 28 L. Ed. 1137; *Doe v. Springfield, etc., Co.*, 104 Fed. 684, 44 C. C. A. 128; *Delaware, etc., Canal Co. v. Mahlenbrock*, 63 N. J. L. 281, 43 Atl. 978, 45 L. R. A. 538; *Penn Collieries Co. v. McKeever*, 183 N. Y. 98, 75 N. E. 935, 2 L. R. A. (N. S.) 127.

⁵ *General Conference of Free Baptists v. Berkey*, 156 Cal. 466, 105 Pac. 411. See, also, *Neyens v. Worthington*, 150 Mich. 580, 114 N. W. 404, 18 L. R. A. (N. S.) 142; *John Deere Plow Co. v. Wyland*, 69 Kan. 255, 76 Pac. 863, 2 A. C. 304.

⁶ *Southwestern Slate Co. v. Stephens*, 139 Wis. 616, 120 N. W. 408, 131 A. S. R. 1074, 29 L. R. A. (N. S.) 92; *Coburn v. Coke*, 193 Ala. 364, 69 So. 574.

§ 1017. Installing Article Sold as Part of Contract of Sale.

—Whether the fact that a foreign corporation is to erect or install within the state an article it has contracted to sell, which is to be furnished from without the state, will bring the corporation within the local law imposing conditions upon the right of foreign corporations to do business within the state, there are a contrariety of decisions. Some jurisdictions hold that the matter of installing or erecting the thing sold is merely incidental to and in aid of the contract of sale which, standing alone, amounts to a transaction in interstate commerce, and that therefore the corporation is not “doing business” in the buyer’s state.⁷ Other courts take the view that the act of installation or erection is not an essential part of the contract of sale, and is, therefore, a state transaction subject to its local laws.⁸

If a transaction is in part purely local and is partly interstate commerce in its nature, and these elements are separable one from the other, the statute relating to foreign corporations is applicable. So where a foreign corporation pursuant to an order procured by its traveling agent manufactured an advertisement and shipped it into the state, and thereafter displayed it for a considerable period, it was held that the maintenance and display of the advertisement being purely local in character constituted doing business in the state unconnected with interstate commerce.⁹ Similarly where it appeared that a foreign corporation sold and shipped into the state an elevator which it installed, and as part of the same contract repaired another elevator, it was held that the statute applied,

⁷ *Flint, etc., Mfg. Co. v. McDonald*, 21 S. D. 526, 114 N. W. 684, 130 A. S. R. 735, 14 L. R. A. (N. S.) 673; *Milan Mill, etc., Co. v. Gorten*, 93 Tenn. 590, 27 S. W. 971, 26 L. R. A. 135; *Louisville Trust Co. v. Bayer Steam Soot Blower Co.*, 166 Ky. 744, 179 S. W. 1034; *Chuse Engine, etc., Mfg. Co. v. Vromania Apartment Co.*, 154 Mo. App. 139, 133 S. W. 624; *Williams v. Golden*, 247 Pa. 397, 93 Atl. 505; *Bowser v. Savidusky*, 154 Wis. 76, 42 N. W. 182.

⁸ *Browning v. Waycross*, 233 U. S. 16, 34 S. Ct. 578, 58 L. Ed. 828; *General R. Signal Co. v. Virginia*, 246 U. S. 500, 38 S. Ct. 360, 62 L. Ed. 854; *York Mfg. Co. v. Colley*, 247 U. S. 21, 11 A. L. R. 611, 38 S. Ct. 430, 62 L. Ed. 963; *Palm Vacuum Cleaner Co. v. Bjornstad*, 136 Minn. 38, 161 N. W. 215, L. R. A. 1917C 1012; *State v. Gorham*, 115 N. C. 721, 20 S. E. 179, 44 A. S. R. 494, 25 L. R. A. 810.

⁹ *Imperial Curtain Co. v. Jacob*, 163 Mich. 72, 127 N. W. 772.

although the installation of the new elevator was an act of interstate commerce.¹⁰

On the other hand it has been held that the installation of a soda fountain by a foreign corporation was a reasonable incident of sale and constituted a single act of interstate commerce. Accepting an old fountain in reduction of the price for the new one was merely incidental, and does not change the conclusion that qualification as a foreign corporation was unnecessary in order to enable it to bring suit for the balance of the purchase price.¹¹

§ 1018. Soliciting Subscriptions or Selling Stock as Doing Business Within the State.—In accordance with the general applied rule that “doing business” or “transacting business” appertains only to ordinary or customary business acts in the prosecution of the purposes of the corporation, as distinguished from mere acts within its powers, it is generally held that the solicitation and acceptance by a foreign corporation of subscriptions to its capital stock, does not constitute doing business.¹² However, if the entire business of a corporation consists in the sale of its stock, the foregoing rule is not applicable, since the sale of stock in its business and not a mere incident thereto, as is ordinarily the case with corporations.¹³

§ 1019. Soliciting Trade as Doing Business Within the State.—Within the provisions of statutes imposing certain conditions upon the right of foreign corporations to do business in the state, a foreign corporation is not doing business in the state where it merely employs solicitors to secure orders for goods to be shipped from another state, and transmit the same to the home office for its acceptance, since such business is merely incidental to the business which the corporation conducts in the state where it is incorporated,

¹⁰ *Haughton Elevator, etc., Co. v. Detroit Candy Co.*, 156 Mich. 25, 120 N. W. 18.

¹¹ *Puffer Mfg. Co. v. Kelly*, 198 Ala. 131, 73 So. 403.

¹² *General Conference v. Berkeley*, 156 Cal. 466, 105 Pac. 411; *Cockburn v. Kinsley*, 25 Colo. App. 89, 135 Pac. 1112; *Hauger v. International Trading Co.*, 184 Ky. 794, 214 S. W. 438; *Cumberland Co-operative Bakeries v. Lawson*, 91 W. Va. 245, 112 S. E. 568. Contrary view, see *Atkinson v. United States Operating Co.*, 129 Minn. 232, L. R. A. 1916E 241, 152 N. W. 410.

¹³ *Booth v. Scott*, 276 Mo. 1, 205 S. W. 633.

and it constitutes interstate commerce.¹⁴ And this has been held to be true although the foreign corporation also maintains a place of business or office within the state where the order was taken.¹⁵ And also where the goods to fill the orders are sometimes purchased within the state where the order was taken.¹⁶ And although accounts are open with the purchasers, and payments for the goods collected.¹⁷ Nor does the sale of goods through solicitors, and the delivery thereof in the state, and the collection of the purchase price constitute doing business therein.¹⁸ And the act of a foreign transportation company in soliciting and accepting subscriptions to its capital stock after its organization is not doing business within the state.¹⁹ Nor does the soliciting of the purchase of grain in one state, to be shipped to a corporation in the state of its domicile, constitute doing business in the former state.²⁰

But it has been held that where a foreign corporation maintained and operated in its name and office in the state, from which office it carried on business in the state by the personal canvass of its general agent, this constitutes doing business within the state within the provision of the general corporation law, prohibiting certain foreign corporations from doing business within the state without first securing a certificate from the secretary of state.¹ And the general rule is that where a corporation establishes a branch agency in the state to solicit the sale of and to sell its product, it is doing business within the state, and such business does not relate to interstate commerce; hence the corporation is subject to the laws of the state imposing conditions upon the right of foreign corporations to do

¹⁴ *Hagen Paper Co. v. East St. Louis Pub. Co.*, 190 Ill. App. 581, 269 Ill. 535, 109 N. E. 979; *Imperial Curtain Co. v. Jacob*, 163 Mich. 72, 127 N. W. 772; *F. N. Ellis Lumber Co. v. Johns*, 152 Mo. App. 516, 133 S. W. 633.

¹⁵ *Smith & Co. v. Dickinson*, 81 Wash. 465, 142 Pac. 1133.

¹⁶ *Frank Prox Co. v. Bryan*, 185 Ill. App. 322.

¹⁷ *Lehigh Portland Cement Co. v. McLean*, 245 Ill. 326, 92 N. E. 248, 137 A. S. R. 322.

¹⁸ *Bruner v. Kansas Moline Plow Co.*, 168 Fed. 218, 93 C. C. A. 504.

¹⁹ *Philadelphia & G. S. S. Co. v. Clark*, 59 Pa. 415.

²⁰ *Cooper v. E. L. Welsh Co.*, 218 Fed. 719.

¹ *American Case & Register Co. v. Griswold*, 143 App. Div. 807, 128 N. Y. Supp. 206, 206 N. Y. 723, 100 N. E. 1124.

business therein.² So, where a foreign corporation secures orders for goods through a soliciting agent, and the goods sold are delivered at its office in that state, and the orders taken are not sent subject to the approval of the home office, it is doing business within the state.³ And soliciting and selling goods by a traveling salesman, who delivered them from his trunks as sold, constitutes doing business within the state.⁴

§ 1020. Actions Against Foreign Corporations.—Whether a corporation can be sued in a state of which it is not a resident depends upon the position in which it has seen fit to place itself in reference to that state in connection with the laws thereof.⁵ However, when a foreign corporation accepts the privilege of doing business in the state, and prosecutes such business through its agents, it submits itself to the laws of the state and to the jurisdiction of the courts.⁶ The fact that a foreign corporation is engaged in interstate commerce does not render it immune from the jurisdiction of the state courts in any state in which it may be engaged in doing business.⁷ So long as a corporation refrains from doing business in a state other than that of its creation, the courts of such other states cannot exercise jurisdiction in personam over it unless it voluntarily submits thereto, and the presence of any of its officers is not, irrespective of their rank, such a submission.⁸

The statutory condition relative to service of process on foreign corporations is that such corporations be doing business within the state, and this condition applies likewise to service of summons upon the secretary of state.⁹ And it is incumbent on the plaintiff to show that such corporation is so doing business.¹⁰

² *Banker Bros. Co. v. Pennsylvania*, 222 U. S. 210, 56 L. Ed. 168, 32 S. Ct. 38; *Marconi Wireless Teleg. Co. v. Commonwealth*, 218 Mass. 558, 116 N. E. 310.

³ *Westerly Shirt Co. v. Kaufman*, 145 N. Y. Supp. 68.

⁴ *Despres Bridges & Noel v. Zierleyn*, 163 Mich. 399, 128 N. W. 769.

⁵ *Reyer v. Odd Fellows Fraternal Acc. Assoc.*, 157 Mass. 367, 32 N. E. 469, 34 A. S. R. 288.

⁶ *Tropico Land, etc., Co. v. Lambourn*, 170 Cal. 33, 148 Pac. 206.

⁷ *Knapp v. Bullock Tractor Co.*, 242 Fed. 543.

⁸ *Saxony Mills v. Wagner*, 94 Miss. 233, 47 So. 899, 136 A. S. R. 575, 19 A. C. 199, 23 L. R. A. (N. S.) 834.

⁹ *George Frank Co. v. Leopold & Farrin*, 13 Cal. App. 59, 108 Pac. 873.

¹⁰ *Eureka, etc., Co. v. California Ins. Co.*, 130 Cal. 153, 62 Pac. 393.

The voluntary appearance of a foreign corporation, unless for the sole purpose of making objection to the authority of the court to proceed, will as in the case of other non-residents confer on a court having jurisdiction of the subject matter full power to decide the matter in controversy, and the defendant corporation cannot afterwards set up as a defense want of jurisdiction of the person.¹¹

§ 1021. Transfer of Causes From State to Federal Courts.

—A foreign corporation cannot be deprived of its right to litigate in the federal courts as any other non-resident by the state in which it is sued, either by the enactment of its legislature, or by any stipulation exacted of the foreign corporation in pursuance of such enactment to the effect that it will, if permitted to do business within the state, waive such right of removal.¹²

The principle established by the more recent decisions of the supreme court of the United States is that a state may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the state, exact from it a waiver of the exercise of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, whether waived in advance or not. The principle does not depend for its application on the character of the business the corporation does, whether intrastate or interstate, although that has been suggested as a distinction in some cases. It rests on the ground that the federal constitution confers on citizens of one state the right to resort to federal courts in another; that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured, is void because the sovereign power of a state in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law.¹³

¹¹ *Macon, etc., R. Co. v. Gibson*, 85 Ga. 1, 11 S. E. 442, 21 A. S. R. 135.

¹² *Donald v. Philadelphia, etc., Coal, etc., Co.*, 241 U. S. 329, 36 S. Ct. 563, 60 L. Ed. 1027.

¹³ *Terral v. Burke Construction Co.*, 257 U. S. 529, 21 A. L. R. 186, 42 S. Ct. 188, 66 L. Ed. 352. The cases of *Doyle v. Continental Ins. Co.*, 94 U. S. 535, 24 L. Ed. 148, and *Security Mutual Life Ins. Co. v. Prewitt*, 202 U. S. 246, 50 L. Ed. 1013, 26 S. Ct. 619, 6 A. C. 317, must be considered as overruled, and the views of the minority judges in those cases have become the law of the supreme court.

Prior to the foregoing decision of the supreme court of the United States, it has been held that a state statute providing for the revocation of the license or permit of a foreign corporation to do business in the state for the removal of a cause to a federal court without the consent of the opposing party is unconstitutional and void if its effect is to violate any clause of the federal constitution.¹⁴ Thus it has been held that the state had no right to exclude a foreign corporation from the state because it brought an action in the federal court, where the corporation had acquired property and contract rights under the sanction of state laws, as to do so would impair the obligation of contracts or deprive the foreign corporation of its property without due process of law.¹⁵

§ 1022. Affidavit of Service Upon Foreign Corporation.

....., being duly sworn, says that he is over the age of eighteen, and is not a party to the above entitled action; that he received the annexed summons on the day of, 19..., and personally served the same, together with a copy of the complaint in said action, on, the defendant corporation named in said summons, by personally delivering to and leaving with, the managing or business agent of said defendant, personally, on the day of, 19..., in said county of, a copy of said summons and a copy of said complaint; the said being then and there the person designated by said corporation as the person upon whom process, issued under the laws of this state against said corporation, should be served.

Subscribed and sworn to (etc.).

(Signature.)

(Official signature.)

§ 1023. Return and Certificate of Service Upon Foreign Corporation.

State of, County of, ss.

To the office of the Clerk of the County of, State of

I Hereby Certify, That I received the annexed summons on the day of, 19..., and personally served the same, together with a copy of the complaint in said action, on, the defendant corporation named in said summons, by personally delivering to and leaving

¹⁴ *Harrison v. St. Louis, etc., R. Co.*, 232 U. S. 318, 34 S. Ct. 333, 58 L. Ed. 621; *Herndon v. Chicago, etc., R. Co.*, 218 U. S. 135, 158, 30 S. Ct. 633, 54 L. Ed. 970; *Mercantile Trust Co. v. Texas, etc., R. Co.*, 216 Fed. 225.

¹⁵ *Western Union Tel. Co. v. Julian*, 169 Fed. 166.

with, the managing or business agent of said defendant, personally, on the day of, 19..., in said county of, a copy of said summons and a copy of said complaint; the said being then and there the person designated by said corporation as the person upon whom process, issued under the laws of this state against said corporation, should be served.

Dated this day of, 19...

(Official signature.)

§ 1024. Liability to Suit After Ceasing to Do Business Within State.—A foreign corporation which has been admitted to do business within a state on the condition that it shall designate an agent for the service of process, cannot, by revoking the authority of the agent and withdrawing from the state, escape from the jurisdiction of the courts of the state as to an action brought by a citizen of the state or one arising from a contract made while the corporation is engaged in business in the state.¹⁶ However, where a corporation has ceased to do business within a state, the revocation of the authority of its agent designated for the service of process in suits against the corporation is valid as to the service of process in an action against the corporation which is not brought by a person within the class designed to be protected by the statutes.¹⁷

In some jurisdictions there appears to be a rule that where a foreign corporation has ceased to do business within a state the revocation of authority of its agent designated for the service of process is effectual although the liability of the corporation was incurred while it was doing business in the state.¹⁸

§ 1025. Jurisdiction of Action Involving Internal Affairs.—The general rule has been declared by the decisions of many courts, and has been stated by text writers, to be that the courts of one state will not exercise the power of deciding controversies relating merely

¹⁶ *Mutual Reserve Life Ins. Co. v. Birch*, 200 U. S. 612, 50 L. Ed. 620, 26 S. Ct. 752; *Brown-Ketcham Iron Works v. George B. Swift Co.*, 53 Ind. App. 630, 100 N. E. 584, 860.

¹⁷ *Hunter v. Mutual Reserve Life Ins. Co.*, 218 U. S. 573, 31 S. Ct. 127, 54 L. Ed. 1155, 30 L. R. A. (N. S.) 686; *Badger v. Helvetia Swiss Fire Ins. Co.*, 136 App. Div. 31, 120 N. Y. Supp. 161.

¹⁸ *Gouner v. Missouri Valley Bridge, etc., Co.*, 123 La. 964, 49 So. 657; *United Missouri River Power Co. v. Wisconsin Bridge, etc., Co.*, 44 Mont. 343, 119 Pac. 796.

to the internal management of the affairs of a corporation organized under the laws of another state, or of determining rights dependent upon such management.¹⁹

The rule rests, according to some decisions, on considerations of policy and propriety, rather than of power. Though the court has acquired jurisdiction of the necessary parties, and of the subject matter, the exercise of that power rests in its discretion, and in the exercise of that discretion, courts have refused to render a decree affecting the internal affairs or management of a foreign corporation, deeming it expedient that the matter should be committed to the courts of the domicile.²⁰

Many cases declare the reason of the rule against assuming jurisdiction of an action involving the internal affairs of a foreign corporation to be the impossibility of enforcing the decree or order.¹ However, in a few cases the fact that, because the defendant is a foreign corporation, and its officers and books and assets are in another state, it may be impossible to grant full relief, has been held not to affect the jurisdiction of the court.² It follows that where, in some form, a satisfactory remedy may justly be given, a court will assume jurisdiction.³

§ 1026. Jurisdiction of Action Involving Payment of Dividends.—In the matter of payment of dividends it has been held that a court will not interfere to restrain a foreign corporation from making such payment, in the absence of a showing of fraud.⁴ And

¹⁹ *Babcock v. Farwell*, 245 Ill. 14, 91 N. E. 683, 137 A. S. R. 284, 19 A. C. 74. See, also, *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076; *Andrews v. Mines Corp.*, 205 Mass. 121, 91 N. E. 122, 137 A. S. R. 428; *Jackson v. Hooper*, 76 N. J. Eq. 592, 75 Atl. 568, 27 L. R. A. (N. S.) 658; *Kelly v. Thomas*, 234 Pa. 419, 83 Atl. 307, 51 L. R. A. (N. S.) 122.

²⁰ *Edwards v. Schillinger*, 245 Ill. 231, 91 N. E. 1048, 33 L. R. A. (N. S.) 895, 137 A. S. R. 308; *New Haven Horse Nail Co. v. Linden Spring Co.*, 142 Mass. 349, 7 N. E. 773.

¹ *Jackson v. Hooper*, 76 N. J. Eq. 592, 75 Atl. 568, 27 L. R. A. (N. S.) 658; *Howard v. Mutual Reserve Fund L. Assoc.*, 125 N. C. 54, 34 S. E. 199, 45 L. R. A. 853.

² *Guilford v. Western Union Tel. Co.*, 59 Minn. 332, 61 N. W. 324, 50 A. S. R. 407.

³ *Raynes v. Sharp*, 238 Mass. 20, 130 N. E. 199.

⁴ *Howell v. Chicago & N. W. R. Co.*, 51 Barb. (N. Y.) 378. See, also, *Edwards v. Schillinger*, 245 Ill. 231, 91 N. E. 1048, 33 L. R. A. (N. S.) 895, 137 A. S. R. 308.

the view has been taken that, where the officers and place of business of the corporation are not within the jurisdiction of the court, a decree for the payment of dividends will not be made because of the inability of the court to secure obedience thereto.⁵ So it is held that, as there is no remedy by which a decree can be enforced, jurisdiction will not be assumed to compel the payment of dividends by a foreign corporation.⁶

But where the right to a dividend is clear and fixed by contract, but action by the directors is necessary before it can be asserted by a suit at law, and a restraint by injunction is essential to maintain the right of the stockholder, the interposition of a court of equity is a proper exercise of its power, and not an improper interference with the internal affairs of a foreign corporation.⁷ So a court will enjoin a foreign corporation from paying dividends in violation of contract.⁸

§ 1027. Right to Issue Attachment Against Foreign Corporation.—A foreign corporation, as a general rule, is deemed to be a non-resident within a statute authorizing attachment on the ground of non-residence.⁹ And in a number of jurisdictions foreign corporations are by statute expressly made subject to attachment.¹⁰ The fact that a foreign corporation is doing business within the state and has complied with the requirements of the statute imposed on foreign corporations doing business in the state, does not affect its liability to attachment as a non-resident.¹¹ But where a corporation becomes domesticated or chartered in a state other than that by which it was originally chartered it is not subject to attachment as a non-resident in that state.¹² There is a rule, however, in several juris-

⁵ *Williston v. Michigan S. & N. I. R. Co.*, 13 Allen (Mass.) 400.

⁶ *Berford v. New York Iron Mine*, 24 Jones & S., 236, 4 N. Y. Supp. 836.

⁷ *Boardman v. Lake Shore & M. S. R. Co.*, 84 N. Y. 157.

⁸ *Prouty v. Michigan S. & N. I. R. Co.*, 1 Hun (N. Y.) 655.

⁹ *Title Ins., etc., Co. v. California Development Co.*, 171 Cal. 173, 152 Pac. 542; *Mason v. Union Mills Paper Mfg. Co.*, 81 Md. 446, 32 Atl. 311, 48 A. S. R. 524, 29 L. R. A. 273.

¹⁰ *Fitzgerald, etc., Construction Co. v. Fitzgerald* 137 U. S. 98, 11 S. Ct. 36, 34 L. Ed. 608.

¹¹ *Paramore v. Alexander*, 132 Ga. 642, 64 S. E. 660.

¹² *Bernhardt v. Brown*, 118 N. C. 700, 24 S. E. 527, 715, 36 L. R. A. 406, 119 N. C. 506, 26 S. E. 162, 36 L. R. A. 407.

dictions that a foreign corporation which has been authorized to do business within a state is not subject to attachment therein as a non-resident.¹³

§ 1028. Appointment of Receiver for Foreign Corporation.

—It is a general rule that a court will not appoint a general receiver of a foreign corporation,¹⁴ or a receiver to wind up the business of a foreign corporation.¹⁵ Thus a receivership has been denied, in a suit by a stockholder against a foreign corporation and its officers, who were without the jurisdiction, alleging misconduct and asking for an accounting and a receivership,¹⁶ in a suit by a resident minority stockholder of a foreign corporation owning land in the state, whose officers and most of whose stockholders were non-residents, asking for a receiver and a winding up on the ground of mismanagement, but not alleging insolvency;¹⁷ and in a case where it was alleged that all the property of the corporation was within the state and all its officers resided therein, and nothing appeared to have been done contrary to the general public policy of the state.¹⁸ But a receiver of the assets of a foreign corporation, as distinguished from a receiver of the corporation, will be appointed to prevent waste or dispersion of the assets.¹⁹ Though it has been held that the court had no jurisdiction to appoint a receiver on a suit by a stockholder complaining of its mismanagement, the better opinion is that it is a matter rather of discretion than of jurisdiction.²⁰

¹³ *Phillipsburgh Bank v. Lackawanna R. Co.*, 27 N. J. L. 206; *Goldmark v. Magnolia Metal Co.*, 65 N. J. L. 341, 47 Atl. 720.

¹⁴ *Pacific Coast Coal Co. v. Esary*, 85 Wash. 448, 148 Pac. 579.

¹⁵ *Republican Mountain Silver Mines v. Brown*, 58 Fed. 645, 19 U. S. App. 203, 7 C. C. A. 412, 24 L. R. A. 776.

¹⁶ *Leary v. Columbia River & P. S. Nav. Co.*, 82 Fed. 775.

¹⁷ *Sidway v. Missouri Land & Livestock Co.*, 101 Fed. 481.

¹⁸ *Sprague v. Universal Voting Machine Co.*, 134 Ill. 379.

¹⁹ *Palmer v. Texas*, 212 U. S. 118, 53 L. Ed. 435, 29 S. Ct. 230; *Fawcett v. Supreme Sitting, O. I. H.*, 64 Conn. 170, 29 Atl. 614, 24 L. R. A. 815; *Summit Silk Co. v. Kinston Spinning Co.*, 154 N. C. 421, 70 S. E. 820, A. C. 1912A 897.

²⁰ *Chicago Title & T. Co. v. Newman*, 187 Fed. 573, 109 C. C. A. 263; *Babcock v. Farwell*, 245 Ill. 14, 137 A. S. R. 284, 91 N. E. 683, 19 A. C. 74.

§ 1029. Annual Report by a Foreign Corporation.

The Company.
Organized under the Laws of the State of

The corporation above named, organized under the laws of the state of, does hereby make the following report in compliance with the provisions of an act of the legislature of, entitled "An Act Concerning Corporations," and the various acts amendatory thereof and supplemental thereto.

First. The name of the corporation is

Second. The location of the registered office is at No. street,, and is the agent upon whom process may be served.

Third. The character of the business is

Fourth. The amount of the authorized capital stock is \$..... The amount actually issued and outstanding is \$.....

Fifth. The names and addresses of all the directors and officers, and the term when the office of each expires, are as follows:

Names of Directors.

Officers:	Address.	Expiration of Term.
President
Vice-president
Second Vice-president
Treasurer
Secretary

Sixth. The next annual meeting of the stockholders for election of directors is appointed to be held on

Witness our hands the day of, A. D. 192...
....., President.
....., Secretary.

§ 1030. Petition for Reinstatement of Charter.

In the matter of the reinstatement of the Charter of
.....
.....
..... } Petition.

To His Excellency,, Governor of the State of

The petition of respectfully shows that on the day of, 192..., under the authority of an act entitled, approved, and the acts amendatory thereof and supplementary thereto, it duly became a body corporate of this state, being other than a gas, electric light, telephone, telegraph, water, pipeline, railroad, or street railway company, or a corporation having the right to use the public streets or to take and condemn lands in this state;

That the amount of capital stock which said corporation was authorized to issue was dollars, divided into shares, of the par value of dollars per share.

On the day of, 192..., upon the receipt by him of a report from the state comptroller, setting forth that said corporation had failed, neglected and refused to pay the franchise tax assessed against it for the year, the governor of this state issued his proclamation declaring, under the act of the legislature of this state, known as, its amendments and supplements, that the charter of this corporation is repealed, and that all powers conferred by law upon said corporation shall be deemed inoperative and void.

On said date there was due from said corporation a franchise tax assessed against it under the laws of this state for each of the years

The approximate value of the net assets of this corporation at the present time is

The failure of said corporation to pay to the state the franchise taxes assessed against it for said years was due to the following reasons:

On January first of each of said years the corporation had issued and outstanding capital stock as follows:

Herewith petitioner tenders for payment to the secretary of state, as a reasonable amount in lieu of taxes and penalties, the sum of dollars.

Petitioner respectfully asks your excellency, upon payment of said sum to the secretary of state in lieu of taxes and penalties due, to reinstate it to all its franchises and privileges, as provided by law.

(Seal.)

.....
(Name of Corporation)

By.....

(President)

Attest:

Secretary.

To His Excellency,, Governor of the State of

I advise the reinstatement of the above named corporation to its franchises and privileges.

.....
Attorney-General.

The, a corporation of this state, whose charter became inoperative by proclamation of the governor, dated, for non-payment of franchise tax assessed against the said corporation, having now petitioned that its franchises and privileges be restored, and having tendered for payment to the secretary of state the sum of dollars, as a reasonable sum in lieu of taxes and penalties due, and the attorney-general having advised the reinstatement of said corporation, I,, governor of the state of, by virtue of the power and authority vested in me by the provisions of and the amendments and supplements thereto, do hereby permit said corporation to be reinstated and entitled to all its franchises and privileges.

In Witness Whereof, I have hereunto set my hand this
..... day of, nineteen hundred and
twenty-.....

.....
Governor.

§ 1031. Substitution of Agent of a Foreign Corporation.

The Company, a corporation organized under the laws of the state of, does hereby revoke, cancel, and annul the appointment of as its agent, upon whom process may be served, said appointment having been made heretofore and filed in the office of the secretary of state of the state of, under the seal of the aforesaid company by its president and attested by its secretary under and in pursuance of the statutes of the state of, and in substitution of the aforesaid designation so filed with the secretary of the state of, the company above named does hereby make, designate and appoint with an office at No. street,, which is the principal office of the company, as the agent of the said company therein and in charge thereof, upon whom process against said company may be served.

In Attestation Whereof, Said corporation has caused this certificate to be signed by its president and secretary, and its corporate seal to be hereto affixed, the day of, A. D. 192....

For the Company,

.....

Secretary.

President.

§ 1032. Acceptance of Statutory Provisions.

I,, president of the Company, a corporation created and organized under the laws of the state of, do hereby certify to the secretary of state of the state of, that, at a meeting of the board of directors (or other governing body of the corporation) of said corporation, regularly held at the office of the corporation on the day of, the following resolution was adopted:

"Resolved, By the board of directors of the Company, a corporation created and organized under the laws of the state of, that, whereas, said corporation desires authority to hold property and transact business in the state of West Virginia, the said corporation hereby accepts the provisions of section thirty of chapter fifty-four of the code of West Virginia and agrees to be governed thereby."

Given under my hand and seal of said corporation, this day of

(Seal.)

.....
President of Company.

§ 1033. Certificate of Withdrawal.

The Northeastern Finance Company, a corporation organized and existing under the laws of the state of Pennsylvania and located at Philadelphia, in said state, hereby certifies as follows:

1. During the year 1925, and for some time following said date, said

corporation was engaged in transacting certain business operations in the state of Connecticut and in accordance with the statutes of said state, on the 3d day of February, 1925, appointed the secretary of said state its attorney for the purpose of accepting service in actions against it.

2. Subsequent to said date, the said company completed and finished its business operations in the state of Connecticut and since said time it has not been engaged in the transaction of its business therein.

This certificate is made and recorded for the purpose of relieving the said corporation from the necessity of filing annual reports in the state of Connecticut in accordance with law.

Dated at Philadelphia this 13th day of September, 1926.

THE NORTHEASTERN FINANCE COMPANY.

By H. C. WHITE, President.

By NORMAN KING, Treasurer.

State of Pennsylvania, County of Philadelphia, ss.

Personally appeared H. C. White, president, and Norman King, treasurer, of the Northeastern Finance Company, signers of the foregoing certificates, and made oath to the truth of the same, before me.

EDWARD MCKEAN,

Notary Public.

§ 1034. Certificate of President to Articles of Incorporation.

I,, president of the Company, a corporation created and organized under the laws of the state of, do hereby certify to the secretary of state of the state of, that the foregoing and annexed is a full, true and correct copy of the certificate of incorporation (or articles of association, as the case may be), with all amendments and addition thereto, of the said corporation.

Given under my hand and seal of said corporation this
..... day of

(Seal.)

.....
President of Company.

Correct—Attest:

Secretary of Company.

CHAPTER LVIII.

CORPORATE ACCOUNTING.

BY RAYMOND M. WANSLEY

Certified Public Accountant, San Diego, California.

Member the American Society of Certified Public Accountants.

- § 1035. Introduction.
- § 1036. Capital Stock Issue.
- § 1037. Stock Subscription Accounts.
- § 1038. Record of Outstanding Stock.
- § 1039. Discount and Premium on Stock.
- § 1040. Organization and Stock Selling Expense.
- § 1041. Treasury Stock.
- § 1042. Bonus Stock.
- § 1043. No-Par-Value Stock.
- § 1044. Bond Issues.
- § 1045. Bond Discount, Premium and Expense.
- § 1046. Amortization of Bond Discount, Premium and Expense.
- § 1047. Bond Interest.
- § 1048. Retirement of Bonds.
- § 1049. Surplus.
- § 1050. Dividends.
- § 1051. Assessments.
- § 1052. Affiliated Corporations.
- § 1053. Merger, Reorganization and Dissolution.
- § 1054. Summary.

§ 1035. **Introduction.**—Every business organization, whether a sole proprietorship, partnership or corporation, has the same basic accounting classifications, namely, assets, liabilities, capital, revenue and expense.

The general accounting system and the general ledger accounts necessary for a corporation do not differ materially from those used by unincorporated businesses of comparable scope, except in the recording of liabilities and capital and their related accounts.

The financial structure of a corporation is similar to that of a partnership in that the capital is contributed and the net worth owned by more than one individual, but there are important differences in the two forms of organization which materially affect accounting procedure.

The contribution of a partnership's capital is reflected by separate

credits to the several partners' capital accounts. A record of this nature upon the general ledger of a corporation would be impractical in most cases since frequently the proprietors, or stockholders as they are called, are numbered by hundreds or thousands. Their investments are, therefore, represented by one account designated as capital stock.

The rights and obligations of all stockholders are not equal. Distinction between classes of stockholders is made by the issuance of different kinds of stock—common, preferred, founders', guaranteed, debenture, etc.—of which the first two are the only ones in common use in the United States. The corporate records must clearly reflect the status of all capital liabilities represented by stock.

In the majority of cases, a new corporation incurs organization expenses, stock selling commissions or expense, or it sells its stock at a premium or a discount. These incidentals to the organization of a corporation, not encountered in partnership accounting, must be properly recorded by the corporation accounting system.

Unlike a partnership, a corporation has a stated or authorized capital stock, part of which may be issued and part unissued, and some of which may be purchased by, or donated to, the corporation and so become treasury stock. The history of all of the corporation's stock must be reflected by its accounts.

As in a partnership, the net worth of a corporation is the excess of its assets over its liabilities. The net worth of a corporation, however, is shown in two divisions: the original investment as capital stock issued and related accounts, and subsequent additions as surplus.

Earnings and dividends are not entered directly to the capital investment accounts, as in the case of a partnership, but are recorded in surplus, as are likewise other additions to net worth other than from sale of stock. These additions to net worth must be recorded separately on the corporation's books as paid-in surplus, donated surplus, surplus by appreciation, earned surplus, etc.

The capital investment of a partnership may be distributed as the partners see fit, but the investment in a corporation, represented by its capital stock, together with certain classes of surplus, may not be distributed as dividends. The corporate accounts must, therefore, distinguish clearly between capital stock and appropriated

or reserved surplus, which are not available for dividends, and free surplus from which dividends may be declared.

The formal liabilities of a partnership are usually notes or mortgages to individuals or banks for relatively short periods. The credit requirement of a corporation is generally larger and its financial program for a longer period. Corporate borrowings are, therefore, frequently financed through the sale of the corporation's notes, bonds, trust certificates, etc., to the general public. Transactions of this nature are not face to face borrowings but are transacted through underwriters and trustees and involve bond discount or premium, bond issue expense, sinking fund payments, etc., which must be accounted for upon the corporation's books.

It is toward these features of corporate accounting, which are not encountered in the transactions of unincorporated businesses, that the discussion of this chapter is directed.

§ 1036. Capital Stock Issue.—The first entry in a set of corporation books is that which records the authorized capital stock. An opening statement should be made in the journal stating the capital structure and the general powers of the corporation.

Example:

THE BLANK BUILDING COMPANY,
San Diego, California.

A corporation organized under the laws of the state of California, incorporated December 30, 1926, with an authorized capital stock of seven hundred and fifty thousand dollars (\$750,000), divided into five thousand (5000) shares of common stock of the par value of one hundred dollars (\$100) each and twenty-five hundred (2500) shares of preferred stock of the par value of one hundred dollars (\$100) each, with all powers necessary to carry on the business of owning, improving, operating, buying and selling real estate or other property as principal or agent.

The authorized capital stock should next be recorded upon the books by appropriate journal entry.

Example:

Unissued common stock	\$500,000.00	
Unissued preferred stock	250,000.00	
Authorized common stock		\$500,000.00
Authorized preferred stock		250,000.00
(To record capital stock authorized by the corporation's articles of incorporation.)		

Practically every state requires that a certain amount of stock should have been subscribed for by the incorporators for cash, prior

to incorporation. The entry regarding this subscription should be made through the cash book.

Example:

Cash	\$500.00	
Unissued common stock		\$500.00
(To record sale and issuance of one share of common stock to each of the following incorporators: Elmer Allison, Samuel Barnes, Ernest White, William Hinkle, Albert Hard.)		

Stock of the corporation is frequently issued for considerations other than cash, i. e., property or services.

Example:

(1) Organization expense	\$ 2,500.00	
Unissued common stock		\$ 2,500.00
(To record part payment of legal fees in connection with organization of corporation by issuance of common stock.)		
(2) Real estate	50,000.00	
Unissued preferred stock		50,000.00
(To record purchase of factory site and payment therefor in preferred stock of the corporation as authorized by the board of directors.)		
(3) Salary bonus expense	5,000.00	
Unissued common stock		5,000.00
(To record payment of salary bonus of $\frac{1}{2}\%$ of sales of the current year in common stock of the corporation per authority of board of directors.)		

§ 1037. Stock Subscription Accounts.—If stock is sold to the general public on an “installment” or “call” basis, it is proper to open in the general ledger an account with stock subscribers which will serve as a control for the subsidiary ledger containing the detail of the accounts of the individual subscribers. The entries may be made through the journal or, where many subscriptions are being received, through a stock subscription record.

Example:

Common stock subscribers	\$1,000.00	
Common stock subscribed		\$1,000.00
(To record subscription of John Brown for ten shares of common stock.)		

As payments are made by subscribers upon their subscriptions their accounts should be credited through the cash book.

Example:

Cash	\$300.00
Common stock subscribers	\$300.00
(To record payment by John Brown upon his subscription for common stock.)	

When the stock has been fully paid and the subscriber's liability extinguished, the actual issuance of the stock is recorded on the general ledger by journal entry.

Example:

Common stock subscribed	\$1,000.00
Common stock unissued	\$1,000.00
(To record issuance of ten shares of fully-paid stock to John Brown.)	

If payments have been made on subscriptions for capital stock and forfeited, the amount paid upon the subscription should be returned to the subscriber, if so specified by the law of the jurisdiction, or held the time required by law, after which it may be credited to paid-in surplus.

§ 1038. Record of Outstanding Stock.—To record the outstanding stock properly, the following books are necessary:

Stock Certificate Book.

Stock Journal.

Stock Ledger.

There should be a separate set of the above records for each issue of stock—common, preferred, etc. The stock certificate book provides a stub upon which is recorded, for the corporation's record, the number of the certificate, to whom issued, the number of shares, the class of stock, the date of issuance, and, usually, receipt for the stock by the stockholder.

The original issuance of certificates and subsequent transfers are recorded through the stock journal. Entries are posted from the stock journal to the stock ledger accounts of the stockholders whose holdings are affected.

Example:

COMMON STOCK JOURNAL.							No. 1.	
Date 1927	From Whom Transferred	Cert. No.	No. of Shares	✓	To Whom Issued	Cert. No.	No. of Shares	✓
May 5	Unissued common stock				Wm. Bernard (Address)	43	50	✓
May 10	William Bernard (Address)	43	50	✓	Wm. Bernard (Address)	81	20	✓
					Albert Henderson (Address)	82	30	✓

Example:

COMMON STOCK LEDGER.
William Bernard
(Address)

Date 1927	Certificates Canceled			Certificates Issued			Balance
	Fol.	Cert. No.	No. Shares	Fol.	Cert. No.	No. Shares	
May 5				J. 1	43	50	50
May 10	J. 1	43	50				
May 10				J. 1	81	20	20

The stock shown as outstanding by the capital stock ledgers should be balanced periodically against and reconciled with the total stock shown outstanding by the capital stock accounts of the general ledger. Some states require the keeping of a stock transfer register in addition to the above.

§ 1039. Discount and Premium on Stock.—It is allowable in some states to sell stock at a discount and it is universally allowable to sell stock at a premium. The recording of stock discount or premium upon the books is, therefore, a problem which is frequently encountered.

Discount represents the deficiency and premium the excess of the amount received for stock as compared to the par value of the stock sold. Appropriate accounts should be opened in the ledger to record the credits for stock premium or charges for stock discount.

Examples:

(1) Cash	\$1,050.00	
Unissued preferred stock		\$1,000.00
Preferred stock premium		50.00
(To record sale of ten shares of preferred stock at 105.)		
(2) Cash	900.00	
Common stock discount	100.00	
Unissued common stock		1,000.00
(To record sale of ten shares of common stock at 90.)		

It is considered conservative accounting to charge off stock discount over a number of years, varying with the circumstances. There is nothing compulsory in this rule, however, and it is not required that stock discount shall be made good from earnings before dividends may be declared. Any write-off of stock discount should not be charged against current earnings but against surplus.

Stock premium may be considered as paid-in surplus, and in most cases except that of national banks, may be transferred to the free surplus account and made available for dividends. Generally speaking, there is no restriction against paying dividends out of stock premium or paid-in surplus but the more conservative treatment is to consider stock premium as a part of the permanent capital of the business. This, however, is not a question of accounting but of administrative policy.

§ 1040. Organization and Stock Selling Expense.—A corporation is an artificial being created according to certain prescribed legal requirements. It is also a means of financing an undertaking by the sale of stock, frequently to a large and scattered body of stockholders. Because of these facts, there are necessary expenses in connection with the organization of a corporation. These include legal and accounting fees, expense of licenses, permits, printing of stock certificates, etc. It also includes, in cases where the stock is sold to the general public, either stock selling expense in connection with its sale or selling commissions to salesmen or underwriters. These expenses should be recorded on the corporation's ledger under an appropriate account name such as "organization expense."

In the past, the presence of such an account on the balance sheet of a corporation was viewed with disfavor on the ground that it represented "water." The theory was that such expenses should be written off to profit and loss during the first three or five years of the corporation's existence. The more used method was, however, to eliminate the account by adding these expenses to the cost of the corporation's assets, a process which did not squeeze out the "water" but concealed it.

More modern accounting practice looks upon these expenses and selling commissions, which are allowed by law, as the necessary cost of organizing a corporation and as proper items on the balance sheet. A corporation which has been organized and financed by a stock-selling campaign has, in addition to its tangible assets, its franchise. In the beginning, it was but an idea in the mind of the promoter. As soon as it is organized and financed it has an intangible value similar to that of the goodwill of a going business.

For the above reasons, and because in the first years of the corporation's existence its earnings are frequently small, it is the more general opinion at present that organization and stock selling expense should not be treated as a charge to current earnings before the declaration of dividends. If, after the corporation has established a considerable surplus, it is desired to write off this expense, it should be done against surplus and not against current earnings. However, this would seem unnecessary if the business has been successful, inasmuch as it might well stand upon the books in lieu of goodwill. It should, however, always be carried under its true

name and should never be added to assets or its nature otherwise misrepresented. At best, it constitutes an intangible asset.

§ 1041. Treasury Stock.—In some states, corporations are allowed to purchase their own stock; in others they are not. When a company acquires its own stock which has been purchased by a subscriber and fully paid, whether it acquires it by purchase or gift, the stock becomes treasury stock. The entry recording the purchase should disclose if the stock was purchased at par or at a premium or discount.

Examples:

(1) Treasury common stock	\$1,000.00	
Cash		\$1,000.00
(To record purchase of ten shares of own common stock at par.)		
(2) Treasury common stock	1,000.00	
Surplus	100.00	
Cash		1,100.00
(To record purchase of ten shares of own common stock at 110.)		
(3) Treasury common stock	1,000.00	
Cash		900.00
Discount on treasury stock purchased.....		100.00
(To record purchase of ten shares of own common stock at 90.)		

If treasury stock purchased at par or at a premium is sold for more than cost, the profit is credited direct to surplus and, if sold at less than cost, the loss is charged to surplus. The sale of treasury stock purchased at a discount requires a more complicated entry.

Example:

Cash	\$950.00	
Discount on treasury stock purchased.....	100.00	
Treasury common stock		\$1,000.00
Surplus		50.00
(To record sale at 95 of treasury stock purchased at 90.)		

When treasury stock is received by donation, it is set up on the books at par.

Example:

Treasury common stock	\$1,000.00	
Donated surplus		\$1,000.00
(To record donation of ten shares of common stock to the corporation.)		

The sale of treasury stock which has been donated to the corporation adjusts the donated surplus account to a realized basis.

Example:

Cash	\$850.00	
Donated surplus	150.00	
Treasury common stock		\$1,000.00
(To record sale of donated treasury stock at 85.)		

The recording of donated stock at par may result in a temporary inflation of the surplus of the corporation but it does not inflate the corporation's net worth, inasmuch as the treasury stock acts as an equal reduction of the stock liability. Donated surplus should not, of course, be treated as available for dividends until donated treasury stock has been disposed of and donated surplus reduced to a realized basis. It is suggested that donated surplus which is offset by treasury stock might well be labeled "donated surplus unrealized" to indicate that it is in reality only a reduction of the stock liability and not a true surplus available for dividends.

Whether treasury stock is acquired by purchase or donation, it is an asset of the corporation in the amount of its par value. Conservative accounting practice, however, requires that treasury stock shall not be shown upon the balance sheet as an asset but as a reduction of the outstanding stock.

§ 1042. Bonus Stock.—Donated treasury stock is frequently used as bonus stock to be given with other classes of stock—usually preferred stock—when sold. Thus, a corporation might be organized with a capital stock of \$750,000, \$250,000 of which was preferred stock and \$500,000 common stock. The \$500,000 of common stock might be given to the promoter for a patent, mining claim, or other more or less valuable tangible or intangible property. In order to make the preferred stock more salable, the promoter could donate to the corporation \$250,000 of common stock which would be set up on the corporation's books as treasury common stock and a corresponding credit made to donated surplus in the manner indicated by the above journal entry:

The corporation could then offer its preferred stock for sale at par with a bonus of one share fully paid treasury common stock with each share of preferred stock purchased. This device is often resorted to in order to make bonus stock attractive. Unissued common stock, if given as a bonus without full consideration being received

therefore, would in most states be assessable up to its par value. Treasury stock fully paid is, therefore, more attractive as a bonus offer. The liability to assessment referred to above must not be confused with the stockholders' liability existing in some states, notably California, for the debts of the corporation.

Assuming that a sale of preferred stock is made upon this basis, the issuance of the treasury stock as a bonus must be shown on the corporation's books.

Example:

Cash	\$1,000.00
Donated surplus	1,000.00
Unissued preferred stock	\$1,000.00
Treasury common stock	1,000.00
(To record the sale of ten shares of preferred stock with which a bonus of ten shares of common stock was given.)	

Thus it is seen that, as the preferred stock is sold and the treasury common stock given as a bonus, the donated surplus will be gradually eliminated. Some authorities insist that the treasury common stock when donated back to the company should be used to reduce the asset for which it was originally issued, and not to create donated surplus, on the ground that the original issue of common stock was probably in excess of the value of the assets for which it was issued.

Example:

Treasury common stock	\$250,000.00
Trademarks and patents	\$250,000.00
(To record donation of 2500 shares of common stock to the corporation and a similar reduction of the asset for which the entire issue of common stock was made.)	

If the treasury common stock so entered is given as a bonus with preferred stock sold, it should then be charged to treasury common stock bonus.

Example:

Cash	\$1,000.00
Treasury common stock bonus	1,000.00
Unissued preferred stock	\$1,000.00
Treasury common stock	1,000.00
(To record sale of ten shares of preferred stock with which bonus of ten shares of common stock was given.)	

While on the face of it the second treatment may seem to be more

conservative, still it is hardly more logical and does not result in any greater protection to the purchaser of stock. Designation of the asset for which the common stock is issued, as goodwill, trademarks, patents, mineral lands, etc., is notice to the buying public that such assets have, at best, a speculative value and potential earning capacity. Furthermore, the presence of the donated surplus on the balance sheet, properly labeled, is indication that it is not paid-in or earned surplus and that its value is contingent upon future earnings.

The chief concern of the accountant keeping corporate books or preparing a balance sheet for a corporation should be to see that all the items are properly labeled according to their true nature. Thus, it would be entirely wrong, upon giving donated treasury common stock as a bonus with preferred stock, to add the par value of this stock to any asset standing upon the company's books or to allow the donated surplus to stand at its original figure.

§ 1043. No-Par-Value Stock.—The above discussion of capital stock has been related only to stock having a stated par value. Many states now allow the sale of stock having no stated par value. In some instances, the procedure outlined for transactions involving par-value stock are not applicable to no-par-value stock.

The accounts for authorized capital stock, unissued capital stock, capital stock premium and capital stock discount necessary to record par-value stock are not necessary in accounting for no-par-value stock inasmuch as the stock liability is determined solely by the amount of cash or the value of the assets for which the no-par-value stock is issued.

Examples:

(1) Cash	\$ 730.00	
No-par-value common stock		\$ 730.00
(To record sale of ten shares of no-par-value common stock.)		
(2) Real estate	45,000.00	
No-par-value common stock		45,000.00
(To record issuance of 450 shares of no-par- value common stock in payment for real estate of a value of \$45,000, as authorized by board of directors.)		

Subscriptions and payments for no-par-value common and preferred stock should be entered in the same manner as outlined for

par-value stock. No-par-value stock purchased by or donated to the issuing corporation should be set up as treasury stock at what would be the equivalent of par value, i. e., the amount actually paid into the corporation when it was originally issued. The subsequent entries upon sale or other disposition of no-par-value treasury stock may be made according to the method suggested for par-value issues.

No-par-value stock, because it has no stated value, allows unusual opportunities for inflation of the values of assets for which stock is issued and the issuance of stock for inadequate values. The entries shown above have been drawn to illustrate this fact by showing that stock was sold for cash at \$73 per share and exchanged for real estate at an apparent consideration of \$100 per share. Inflation must be guarded against by close scrutiny of the values received for issuance of no-par-value stock and, of course, for par-value issues of stock as well.

§ 1044. Bond Issues.—The method of recording a bond issue is fundamentally similar to that used for a stock issue.

Examples:

- | | | |
|---|--------------|--------------|
| (1) First mortgage bonds payable—unissued | \$350,000.00 | |
| First mortgage bonds payable | | \$350,000.00 |
| (To record the authorized issue of first mortgage bonds payable). | | |
| (2) Cash | 200,000.00 | |
| First mortgage bonds payable—unissued..... | | 200,000.00 |
| (To record sale of \$200,000 first mortgage bonds at par for cash.) | | |

Bonds are seldom sold directly to the public on a subscription basis. They are, however, occasionally sold to bond houses, notably in the case of bonds for building purposes, under an agreement providing for payments of cash as needed—as the construction of the building progresses, for instance. Under these circumstances, the bond house should be charged with the sale price of the issue when delivered and credited with cash as received.

§ 1045. Bond Discount, Premium and Expense.—The theory of bond discount and premium, aside from the factor of selling expense, is that the discount or premium represents the difference between the going rate of interest and the rate of interest which the bonds carry. Thus if the bonds provide for 6% interest and the cur-

rent market interest rate is 7% the bonds must sell at a discount and for a price which will yield the purchaser 7% upon his investment. On the other hand, if the current market rate of interest is 5% then the bonds will sell at a premium so that the interest payments which the purchaser receives will be the equivalent of 5% upon the amount which he pays for the bonds.

As a matter of actual practice, bonds are usually issued to carry the market rate of interest and are sold to banks, bond houses or other financial institutions at a discount intended to cover the cost of marketing and a profit to the underwriters, who sell them to the public at par or near par. In any case, we are only concerned with the ultimate figure at which the bonds must be redeemed, the price which the corporation receives from the sale, and the difference—discount or premium.

Discount should be recorded by the corporation as the equivalent of prepaid interest and premium as a rebate on future interest.

Examples:

(1) Cash	\$190,000.00	
First mortgage bond discount	10,000.00	
First mortgage bonds unissued.....		\$200,000.00
(To record sale of first mortgage bonds of a par value of \$200,000 to the Blank Under- writing Company at 95.)		
(2) Cash	210,000.00	
First mortgage bonds unissued		200,000.00
Premium on first mortgage bonds.....		10,000.00
(To record sale of first mortgage bonds of a par value of \$200,000 to the Blank Under- writing Company at 105.)		

In addition to bond discount and as an offset to bond premium, every bond issue necessitates certain expenses, such as legal and accounting fees, state permits, printing and incidental expenses.

Example:

First mortgage bond expense	\$5,000.00	
Cash		\$5,000.00
(To record expenses in connection with issue of \$350,000 first mortgage bonds payable.)		

Bond discount and premium should not be confused with accrued interest on bonds, when they provide for interest from a date prior to the date of sale. The accrued interest should be credited to the bond interest expense account as an offset to the interest provided for on the bonds and which will be payable on the next interest date.

Example:

Cash	\$211,000.00
First mortgage bonds unissued	\$200,000.00
Premium on first mortgage bonds	10,000.00
First mortgage bond interest	1,000.00
(To record sale of first mortgage bonds of a par value of \$200,000 to the Blank Underwrit- ing Company at 105 and accrued interest for 30 days at 6%.)	

§ 1046. Amortization of Bond Discount, Premium and Expense.—Bond discount, premium and expense, as indicated by the above paragraph, are of the same nature as interest. Discount and expense are not, therefore, a proper charge against operations of the year in which the bond issue is sold nor is the premium an earning of that year. Being in the nature of prepaid interest in the case of discount and expense and a reduction of future interest in the case of premium received, these items should be amortized over the life of the bond issue.

Three methods are frequently used in arriving at this result. The first and least scientific is that of apportioning the net debit or credit from these accounts pro rata over the years for which the bond issue is to run. Thus if the net discount and expense of the bond issue amounted to \$15,000 and the life of the bonds was twenty years, the interest charge would be increased \$750 each year.

Example:

First mortgage bond interest	\$750.00
Bond discount and expense	\$750.00
(To charge bond interest for the current year with its pro rata of first mortgage bond discount and expense.)	

The most scientific method involves the use of actuarial science. The effective interest rate is determined by the relation of the total cost of the bond issue, including bond interest, discount, premium and expense, to the money borrowed as shown by the balance of the bond issue and unamortized bond discount, premium and expense at the end of each interest-bearing period. The effective rate can be determined by actuarial formulae which can be found in any standard work on actuarial science. When the effective interest rate has been determined, the difference between the interest at the effective rate for the current year and the actual interest paid is the amount

of discount or premium to be amortized and the journal entry is similar to the one shown above for the straight-line method.

A more easily applied and a reasonably accurate method is to apportion the bond discount and expense, or premium less expense, upon the basis of the outstanding balances at the end of each interest payment date, without consideration of the compound interest element which is included in the second method. Thus, if the sum of all the balances of the bonds outstanding is divided into the net discount or premium, adjusted for expense, a figure is arrived at which is equal to the net discount or premium applicable to each dollar of bonded indebtedness outstanding at the end of each interest payment period. By applying this figure to the outstanding bonds at the end of any interest-bearing period, the amortization of net discount or premium for that period may be determined.

§ 1047. Bond Interest.—The recording of the interest payments on bonds is not involved. Usually the interest is payable to a trustee, in which case the entry is made through the cash book.

Example:

First mortgage bond interest	\$6,000.00	
Cash		\$6,000.00
(To record payment of semi-annual interest on \$200,000 first mortgage bonds outstanding.)		

If the bonds bear coupons payable at the corporation's office, the liability should be recorded when the coupons are due. The payment made when coupons are presented should be charged to this liability account.

Examples:

(1) First mortgage bond interest	\$6,000.00	
First mortgage bond interest coupons payable....		\$6,000.00
(To record liability for semi-annual bond interest due on \$200,000 first mortgage bonds outstanding.)		
(2) First mortgage bond interest coupons payable.....	5,500.00	
Cash		5,500.00
(To record payment of first mortgage bond coupons presented for cancellation.)		

The above set-up shows a remaining liability of \$500 on account of interest coupons not presented for payment.

In the case of registered bonds with interest payable at the office of the corporation, a record must be kept showing the description and

amount of each bond, the interest payments due and the name and address of the owner. On interest dates, interest checks should be drawn and mailed to the owners of the bonds as shown by the registration record.

Example:

First mortgage bond interest	\$6,000.00	
Cash		\$6,000.00
(To record payment of semi-annual interest on \$200,000 outstanding first mortgage registered bonds.)		

§ 1048. Retirement of Bonds.—Most bond issues provide for the retirement of a certain number of bonds during each year. The bonds may be retired according to their serial numbers or by buying them upon the open market or by calling them in at a specified figure. In the latter case, the trust indenture usually provides for a premium in the earlier years of the issue. Thus, the bonds may be callable the first year at 105, the second year at 104, the third year at 103, the fourth year at 102, the fifth year at 101 and thereafter at par.

The question arises as to the disposition of the premium paid upon the retirement of the bonds. In a strictly technical sense, this premium is of the same nature as bond discount and expense incurred when the bonds are sold and should be prorated over the entire life of the bonds. In actual practice, the amount is usually small enough to be absorbed in current operations.

Example:

First mortgage bonds payable	\$10,000.00	
First mortgage bond interest	500.00	
Cash		\$10,500.00
(To record call and cancellation of \$10,000 first mortgage bonds at 105 as required by trust indenture.)		

If the premium requirements on retirement have been provided for in the amortization of discount and expense, then the charge of \$500 for premium should be made to bond discount and expense, not to current bond interest.

The trust indentures for bond issues do not always provide for the actual retirement of any of the bond issue at specified dates but frequently require the corporation to pay stated amounts into a sinking fund under the control of a trustee.

The trustee may invest the funds intrusted to him (subject to such limitations as the trust indenture may impose) so that they will earn a return, the total of the fund to be accumulated for the retirement of the bond issue at maturity. Usually he may purchase the corporation's own bonds when they can be purchased for a stated maximum or under. He may hold them in the fund and receive the interest payments for the fund or he may cancel them, depending upon his instructions.

The sinking fund should be carried on the books of the corporation as an asset and its earnings reflected in the profit and loss account of the corporation.

Examples:

(1) Sinking fund for first mortgage bonds.....	\$10,000.00	
Cash		\$10,000.00
(To record contribution to sinking fund for first mortgage bonds according to requirements of trust indenture.)		
(2) Sinking fund for first mortgage bonds.....	600.00	
Sinking fund income		600.00
(To record interest earnings on sinking fund investments.)		
(3) First mortgage bonds payable.....	5,000.00	
Sinking fund for first mortgage bonds.....		4,900.00
Sinking fund income		100.00
(To record purchase and cancellation of \$5,000 first mortgage bonds by sinking fund trustee at 98.)		

§ 1049. **Surplus.**—The net worth of a corporation is the excess of its assets over its liabilities and its surplus is the excess of its net worth over its capital stock outstanding. Surplus may be divided into the following general classes:

Paid-in Surplus.

Donated Surplus.

Surplus by Appreciation.

Earned Surplus or Undivided Profits.

Appropriated or Reserved Surplus.

Free Surplus.

Paid-in surplus is created by the receipt of cash or property of a value in excess of the par value of the stock issued therefor, by the receipt of assessments on stock or by reduction of outstanding stock by cancellation. Thus stock premium is of the nature of paid-in

surplus and may be so recorded. Frequently an unincorporated business is incorporated for less than its net worth, creating a paid-in surplus immediately.

Example:

Sundry assets	\$150,000.00	
Sundry liabilities		\$75,000.00
Capital stock issued		50,000.00
Paid-in surplus		25,000.00
(To record the transfer of the assets of Williams & Donaldson, a partnership, to Williams & Donaldson, Inc., in consideration of the assumption of the partnership liabilities and the issuance of the corporation's capital stock to the partners as follows:		
To H. L. Williams	300 shares	
To B. W. Donaldson	200 shares)	

The stockholders of a corporation may agree to reduce the capital stock of the corporation by surrender and cancellation of a proportion of their shares or by the issuance of other shares therefor of a lesser value.

Example:

Common stock authorized	\$50,000.00	
Paid-in surplus		\$50,000.00
(To record the surrender by the stockholders pro rata, of 500 shares of common stock, which have been canceled in accordance with authorized reduction of capital stock.)		

Surplus by appreciation is created by a reappraisal of all or some of the corporation's assets at a higher value than that carried upon its books.

Example:

Real estate	\$25,000.00	
Surplus by appreciation		\$25,000.00
(To adjust book value of plant site to present appraised value as shown by appraisal certificate of realty board.)		

Appreciation of assets has been generally condemned in the past on the ground that, more often than not, it results in inflation of values. A general condemnation of appreciation is, however, as unsound as the use of it without proper regard to facts. The legitimacy of many accounting entries depends, not upon a set rule, but upon all the facts in the specific case. It is self-evident that a balance sheet in which the assets have been appreciated to current values may

contain less overstatement of net worth and inflation of assets than one in which the assets are stated at cost but are no longer of that value. Accounting must not be confused with valuation but the use of any balance sheet must necessarily involve judgment of the value of the assets shown thereon. Surplus by appreciation should always be clearly reflected as such upon the corporation's books and balance sheet and, since it does not represent a realized profit, it should not be considered as available for dividends.

Earned surplus or undivided profits represent the operating profits of the business which have been carried to surplus after all expenses have been deducted and which have not been appropriated or reserved or paid out as dividends. If the net result of these transactions is a debit balance on the ledger account, the designation should be "operating deficit."

Appropriated or reserved surplus may be any of the above classes of surplus which have been set aside by the board of directors as not available for dividends but to be held for some specific purpose or contingency or as a semi-permanent addition to the permanent capital or the business.

Free surplus is any of the above surplus accounts which have not been appropriated or reserved but which are available for dividends.

§ 1050. Dividends. — Dividends are payable only from unappropriated surplus and are never payable from capital. Appropriated surplus may be made into free surplus at any time at the discretion of the board of directors. Dividends may be paid in cash, property, the company's own stock, bonds or script—usually dividends are paid in cash or stock. They are declared by the board of directors and become a liability of the corporation, which should be recorded on its books, as soon as declared.

Examples:

(1) Preferred stock dividends	\$20,000.00	
Preferred stock dividends payable		\$20,000.00
(To record annual preferred stock dividend of 8% on preferred stock outstanding to holders of record on December 31, 1926, pay- able January 15, 1927.)		
(2) Preferred stock dividends payable	20,000.00	
Cash		20,000.00
(To record payment of preferred stock divi- dends.)		

The record of common stock dividends should be made in the same manner. Preferred stock usually carries preference over common stock as to dividends and in the case of cumulative preferred stock all passed dividends on preferred stock must be paid to date before dividends may be paid upon common stock. Dividends should not be shown, however, as liabilities on the books of the corporation, even in the case of passed cumulative preferred dividends, until declared by the directors.

The same obligations with regard to the payment of dividends from surplus and not from capital exists with regard to stock dividends as with regard to cash dividends. A stock dividend results in adding a portion of surplus to the permanent capital of the corporation and making it unavailable for future dividends.

Example:

Common stock dividends	\$35,000.00	
Unissued common stock		\$35,000.00
(To record 10% common stock dividend on common stock outstanding to holders of record on December 31, 1926, payable February 28, 1927.)		

Dividend accounts should be closed into surplus at the end of the accounting period.

In certain industries, such as mining and oil, the chief capital investment is a wasting asset. As the wasting assets are extracted and turned into cash by sale, the portion of the sale price represented by their cost is charged to the cost of operations and credited to a reserve account which acts as a reduction of the book value of the assets. If the company does not desire to reinvest this portion of its capital but desires to return it to its stockholders, the laws of most jurisdictions will allow them to do so. In this case, a certain portion of the dividends may be payable from surplus and a certain portion from the depletion reserve. The portion paid from surplus is a true dividend and the portion paid from the depletion reserve is a liquidating dividend or return of capital. The total dividend, however, should be debited to surplus and the excess of the dividends paid over the surplus available will be reflected upon the balance sheet as an impairment of capital.

§ 1051. Assessments.—At the discretion of the board of directors, as limited by the law of the jurisdiction, a corporation may levy an assessment against its stockholders pro rata upon their holdings.

The purpose is usually to remedy impairment of capital or provide additional working capital. The proceeds of the levy should be credited to paid-in surplus.

Examples:

(1) Assessment No. 1 receivable	\$10,000.00	
Paid-in surplus		\$10,000.00
(To record 5% assessment authorized by the board of directors against stockholders of record as of May 31, 1927, payable July 15, 1927.)		
(2) Cash	9,950.00	
Assessment No. 1 receivable		9,950.00
(To record payments on assessment No. 1 by stockholders.)		

In the above examples, stock of a par value of \$1,000 is shown to be in default as to payment of the assessment thereon. The stock may be sold for the assessment, in which case the cash received from the sale will offset the charge to the assessment receivable account.

§ 1052. Affiliated Corporations.—A holding company is a corporation which owns all or a considerable portion of the capital stock of one or more subsidiary corporations. Two or more corporations, none of which is a holding company, may also be affiliated by reason of inter-company holdings of stock in an almost unlimited number of variations.

When corporations are affiliated, it is often desirable, in order to more clearly reflect the operations and financial standing of the group, to prepare consolidated statements showing the total assets, liabilities, capital and profits of the combination.

The consolidation of operating statements presents few difficulties except that care should be exercised to eliminate inter-company profits contained in inventories which have been purchased from other companies of the group at above cost.

Preparation of the consolidated balance sheet must, in addition, provide for the elimination of inter-company accounts and stock-holdings. The inter-company holdings of stock should usually amount to control in order to justify consolidated statements, but, under some circumstances, consolidation is significant even if the inter-company holdings amount to less than 51%

Example:

CONSOLIDATED WORK SHEET OF AFFILIATED COMPANIES

	Company X	Company Y	Company Z	Combined	Eliminations	Consolidated
Assets—						
Inventories	\$50,000.00	\$100,000.00	\$175,000.00	\$325,000.00	(a) \$30,000.00	\$295,000.00
Advances to Company Z.....	75,000.00	10,000.00	.....	85,000.00	(b) 85,000.00	
Stock of Company Y, at par.....	100,000.00	.....	.....	100,000.00	(c) 100,000.00	
Stock of Company Z, at par.....	180,000.00	25,000.00	.....	205,000.00	(c) 205,000.00	
Stock of Company X, at par.....	.....	.....	30,000.00	30,000.00	(c) 30,000.00	
Bonds of Company Y, at par.....	40,000.00	.....	.....	40,000.00	(d) 40,000.00	
Other assets	164,000.00	177,000.00	497,000.00	838,000.00	.....	838,000.00
Totals.....	\$609,000.00	\$312,000.00	\$702,000.00	\$1,623,000.00	\$490,000.00	\$1,133,000.00
Liabilities—						
Bonds payable .....	.....	\$50,000.00	\$150,000.00	\$200,000.00	(d) \$40,000.00	\$160,000.00
Advances from Company X.....	.....	.....	75,000.00	75,000.00	(b) 75,000.00	
Advances from Company Y.....	.....	.....	10,000.00	10,000.00	(b) 10,000.00	
Other liabilities	\$39,000.00	72,000.00	107,000.00	218,000.00	.....	218,000.00
Capital—						
Capital stock	500,000.00	150,000.00	250,000.00	900,000.00	(c) 335,000.00	565,000.00
Surplus	70,000.00	40,000.00	110,000.00	220,000.00	(a) 30,000.00	190,000.00
Totals.....	\$609,000.00	\$312,000.00	\$702,000.00	\$1,623,000.00	\$490,000.00	\$1,133,000.00

§ 1053. Merger, Reorganization and Dissolution.—Merger of two or more corporations may be effected by any of the following methods:

- A. By purchase by one corporation of
 - 1. assets of other corporations
 - 2. stock of other corporations
 - a. for cash
 - b. in exchange for its own stock or bonds
 - c. followed by dissolution of other corporations and merger of assets and liabilities in purchasing corporation or transfer of assets of all corporations to a new corporation for its stock, bonds, etc.
- B. By transfer of assets of merging corporations to new corporation for its stock, bonds, etc.
- C. By variations of either of above methods.

The entries to record the above transactions are similar to those used for incorporating a going business, acquiring assets for stock, etc., discussed under other headings.

Reorganization consists of a readjustment of the liability and capital elements of a corporation. It may be voluntary or involuntary, conducted by the officers of the corporation, a committee of creditors or by a receiver. Bond holders may accept substitution of preferred stock for part of their claim, preferred stockholders may exchange part of their stock for common stock, and common stockholders may submit to cancellation of a portion of their holdings, all with a view of lessening the liabilities and interest requirements of the business, bettering its statement for credit purposes and creating a surplus. An assessment may also be levied against the stockholders to create working capital or meet pressing liabilities. The entries necessary to record these transactions will be found to resemble those illustrated above with relation to assessments, surplus, donated stock, reduction of capital stock, etc.

Dissolution may be voluntary or may follow a receivership. The assets are usually liquidated and the liabilities discharged. Any cash or assets remaining are then distributed to the stockholders, in accordance with the rights attaching to their stock, by a liquidating dividend which cancels the stock liability and the surplus or deficit.

Example:

Capital stock	\$200,000.00	
Cash		\$150,000.00
Deficit		50,000.00
(To record final distribution of assets of corporation to the stockholders after payment of all outstanding liabilities of corporation.)		

§ 1054. Summary.—The following chart will serve as a summary of the special ledger accounts and subsidiary records required for corporate accounting and the purposes for which they are designed as discussed in the preceding paragraphs:

- I. To record corporate authorization and proceedings:
 - A. Articles of incorporation.
 - B. By-laws.
 - C. Minutes of meetings of board of directors.
 - D. Minutes of meetings of stockholders.
- II. To record capital stock issues:
 - A. Ledger accounts—
 1. Authorized capital stock. (Credit balance)
 2. Unissued capital stock. (Debit balance)
 3. Treasury stock. (Debit balance)
 4. Stock discount. (Debit balance)
 5. Stock premiums. (Credit balance)
 6. Stock bonus. (Debit balance)
 7. Organization expense. (Debit balance)
 8. Stock selling expense. (Debit balance)
 9. Capital stock subscribers. (Debit balance)
 10. Capital stock subscribed. (Credit balance)
 11. Discount on treasury stock purchased. (Debit balance)
 12. Dividends payable. (Credit balance)
 13. Dividends. (Debit balance)
 - B. Subsidiary records—
 1. Capital stock certificate book.
 2. Capital stock journal.
 3. Capital stock ledger.
 4. Capital stock subscription record.
 5. Capital stock subscribers' ledger.
 6. Installment or "call" record.
 7. Dividend record.
- III. To record bonds payable issue:
 - A. Ledger accounts—
 1. Bonds payable. (Credit balance)
 2. Bonds payable unissued. (Debit balance)
 3. Bond discount. (Debit balance)

4. Bond premium.	(Credit balance)
5. Bond issue expense.	(Debit balance)
6. Bond interest.	(Debit balance)
7. Bonds payable sinking fund.	(Debit balance)
8. Sinking fund income.	(Credit balance)
9. Bond interest coupons payable.	(Credit balance)
B. Subsidiary records—	
1. Bonds payable register.	
2. Bond coupon register.	
IV. To record surplus:	
A. Ledger accounts—	
1. Paid-in surplus.	(Credit balance)
2. Donated surplus.	(Credit balance)
3. Surplus by appreciation.	(Credit balance)
4. Earned surplus.	(Credit balance)
or	
Undivided Profits.	(Credit balance)
or	
Operating deficit	(Debit balance)
5. Surplus reserves.	(Credit balance)

Small corporations of simple structure will not require all of the accounts or records specified above and large corporations may require further elaboration. The outline given, however, modified to meet the needs of the individual corporation, will be found to contain provision for recording the corporate transactions of most common occurrence.

In addition to the accounts and records unique to corporations every corporation must provide the usual accounts, subsidiary ledgers and records, to record the assets, liabilities and operations natural to all businesses, whether incorporated or unincorporated.

The balance sheet form shown below, as the concluding example of this chapter, is not presented as typical in all respects but to illustrate the usual methods of reflecting the special corporate accounts, as discussed above, upon the corporation's periodical statements. In the keeping of the corporate books and records, the object should be to reflect the transactions truthfully as they occur; in the preparation of statements, the object should be to reflect truthfully the condition of the corporation on the date of the statement.

Example:

THE BLANK COMPANY
San Diego, California
BALANCE SHEET
As of June 30, 1927

ASSETS		LIABILITIES	
Current assets:		Current Liabilities:	
Cash .....	.....	Accounts payable .....	.....
Accounts receivable .....	.....	Notes payable .....	.....
Less reserve for bad debts.....	.....	Bond interest coupons payable .....	.....
Notes receivable .....	.....	Dividends payable .....	.....
Inventories .....	.....	Deferred income:	.....
Deferred expense:	.....	Advance rent from tenants.....	.....
Unexpired insurance .....	.....	Premium on gold notes.....	.....
Prepaid taxes .....	.....	Fixed liabilities:	.....
Bond discount and expense.....	.....	First mortgage bonds payable.....	.....
Fixed assets:	.....	Less first mortgage bonds unissued .....	.....
Land .....	.....	Gold notes payable .....	.....
Buildings .....	.....	TOTAL LIABILITIES .....	.....
Less reserve for depreciation.....	.....	Capital stock: NET WORTH	.....
Plant and equipment.....	.....	Preferred stock authorized.....	.....
Less reserve for depreciation.....	.....	Less preferred stock unissued.....	.....
Intangible assets:	.....	Common stock authorized.....	.....
Good Will .....	.....	Less treasury common stock.....	.....
Patents .....	.....	Total capital stock issued and outstanding.....	.....
Promotion costs:	.....	Preferred stock subscribed and unissued.....	.....
Organization expense .....	.....	Surplus:	.....
Stock selling commissions and expense.....	.....	Reserved for working capital:	.....
Common stock discount .....	.....	Paid-in surplus .....	.....
Treasury common stock bonus.....	.....	Preferred stock premium.....	.....
Other assets:	.....	Donated surplus unrealized.....	.....
Bonds payable sinking fund.....	.....	Surplus by appreciation.....	.....
Discount on treasury common stock purchased .....	.....	Available for dividends:	.....
Preferred stock subscribers.....	.....	Undivided profits .....	.....
	Donated surplus realized.....
TOTAL ASSETS	Total surplus
	TOTAL LIABILITIES AND NET WORTH.....

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